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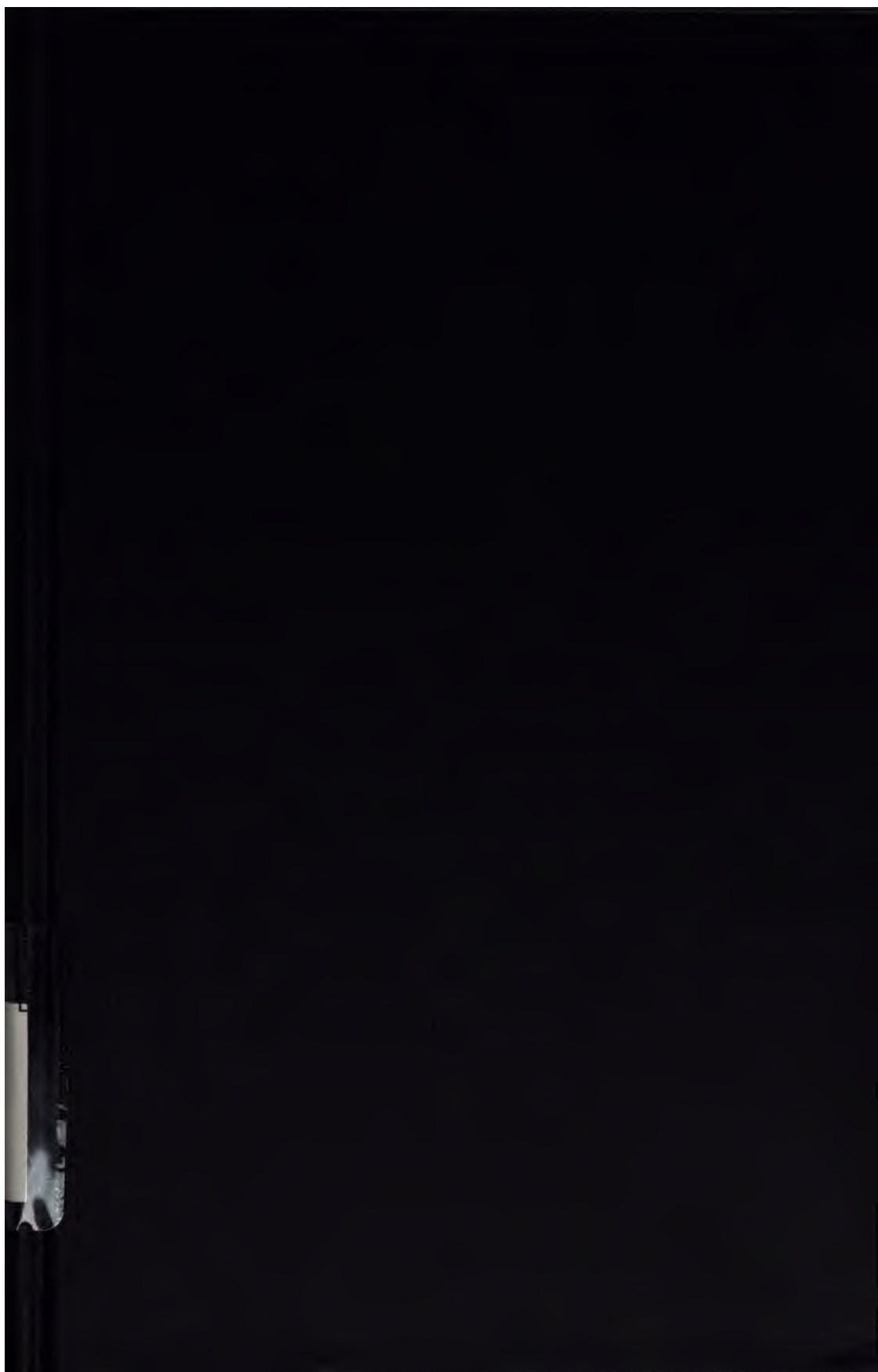
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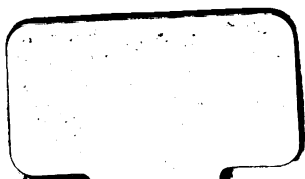
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FOURTH ANNUAL REPORT

OF THE

BOARD OF RAILROAD COMMISSIONERS

OF THE

STATE OF CALIFORNIA

FOR THE

YEAR ENDING DECEMBER 31, 1883.



SACRAMENTO:

STATE OFFICE, JAMES J. AYERS, SUPT. STATE PRINTING.
1884.

MEMBERS OF THE BOARD.

G. J. CARPENTER, First District.....Placerville, El Dorado County
W. P. HUMPHREYS, Second District.....San Francisco
W. W. FOOTE.....Oakland, Alameda County
W. R. ANDRUS.....Secretary
J. P. CARROLL.....Bailiff
E. A. GIRVIN.....Stenographer

OFFICE OF THE BOARD OF RAILROAD COMMISSIONERS:

No. 14 Dupont Street.....San Francisco

FOURTH ANNUAL REPORT

OF THE

Board of Railroad Commissioners.

REPORT.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA, }
AT OFFICE, IN THE CITY OF SAN FRANCISCO, January 7, 1884. }

To his Excellency GEORGE STONEMAN, Governor of the State of California:

SIR: The Constitution requires that this "Commission shall report to the Governor, annually, its proceedings and such other facts as may be deemed important." In compliance with this requirement, and in the exercise of the discretion with which it is coupled, the Commission deems it proper to make to your Excellency a general statement of its official acts and rulings, as they appear of record, accompanied by some of the reasons therefor.

THE COMMISSION—ITS RECENT ORIGIN AND OFFICIAL ATTITUDE.

As one of the constitutional offices of the State, of comparatively recent origin, being now in the first year of its second administration, it can hardly be said to have outlived its possible usefulness. But it must, like every branch of republican government, at the peril of its life, vindicate its right to exist. This can be done in two ways—by theory and results. In theory, the exercise of a power conferred, in the mode prescribed, by a majority of one, is "deemed conclusively just and reasonable." As this presumption follows and attaches to official acts and their probable results, their opponents have found it safest not to wait for them. Hence the frequency of foregone conclusions against the law and the facts.

But if neither rashly presuming upon its position and precedence before the Courts, nor leaning upon incompetent authority, nor deferring to any unauthorized censorship of its course, it has promptly substituted for the facile routine of inconsequential resolutions a thoroughly consistent and advancing plan of action, by methods and measures within the purview of the organic and statute law, it will find in the legitimate instruments of its authority the ready weapons of its defense. If it has resolutely taken the subject-matters of its jurisdiction out of partisan politics, and without fear, favor, or undue influence, has administered them as public trusts in the interest of all concerned, it has subverted one leading and paramount purpose of its creation. If, never prejudging any cause or question submitted for its decision, it has inflexibly adhered to the law and the facts, it need not fear the ultimate judgment of those having an honest interest in its administration, and can afford to wait for the justice it has done to others.

METHODS AND MEASURES IN THE LIGHT OF THE LAW AND THE FACTS.

What the methods and measures of its present incumbents have been and are, will be best and most conclusively shown by reference to the law and to the facts of record. Its most important administrative and remedial powers are defined and conferred by Section 22, Article 12, of the Constitution, in the clauses following:

First—Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpoenas and all other necessary process.

Second—To hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies.

POWERS DEFINED AND PROCESSES PRESCRIBED BY THE CONSTITUTION.

These provisions of the Constitution are thus separately cited because they evidently define different functions and processes of the Commission. The first relates entirely to the "rates of charge for the transportation of passengers and freight." It confers the "power" and imposes the "duty" to "establish" and "publish the same from time to time," with the changes made; and, also, in the same connection, "to examine the books, records, and papers of railroad and other transportation companies." Thus the power and duty of investigation and action are equally imperative, and are, *ex vi termini*, and in their essential nature, as continuous and complicated as the business to which they relate. By the second, there is a distinct devolution of the judicial power to "hear and determine complaints," "in the same manner and to the same extent as Courts of record." The Commission has, therefore, held and decided that a case of this kind should be confined to the parties of record and the subject-matter, and not made an olla podrida of irrelevant and impertinent disputes.

SECTIONS OF STATUTE CORRESPONDING TO CONSTITUTIONAL PROVISIONS.

Chapter 59 of the Statutes of 1880, entitled "An Act to organize and define the powers of the Board of Railroad Commissioners" (approved April 15, 1880), is presumptively valid, and is cotemporary construction of the provisions we are considering. Distinguishing as the Constitution does between the leading functions of the Commission, Section 9 of said Act establishes rules of practice for cases of individual complaint, as follows:

SEC. 9. All complaints before said Board shall be in writing and under oath. All decisions of said Board shall be given in writing, and the grounds of the decisions shall be stated. A record of the proceedings of said Board shall be kept, and the evidence of persons appearing before said Board shall be preserved.

Section 11 prescribes the mode by which the Commission shall "establish or adopt rates of charges," as follows:

SEC. 11. Whenever said Board, in the discharge of its duties, shall establish or adopt rates of charges for the transportation of passengers and freight, pursuant to the provisions of the Constitution, said Board shall serve a printed schedule of such rates, and of any changes that may be made in such rates, upon the person, copartnership, company, or corporation affected thereby; and upon such service, it shall be the duty of such person, copartnership, company, or corporation to immediately cause copies of the same to be posted in all its offices, station houses, warehouses, and landing offices affected by such rates, or change of rates, in such manner as to be accessible to public inspection during usual business hours. Said Board shall also make such further publication thereof as they shall deem proper and necessary for the public good. If the party to be served, as hereinbefore provided, be a corporation, such service may be made upon the President, Vice-President, Secretary, or managing agent thereof, and if a copartnership, upon any partner thereof. The rates of charges established or adopted by said Board, pursuant to the Constitution and this Act, shall go into force and effect on the twentieth day after service of said schedule of rates, or changes in rates, upon the person, copartnership, company, or corporation affected thereby, as hereinbefore provided.

TO FIND AND DECIDE WHAT RATES OF CHARGE ARE JUST AND REASONABLE, THE ONLY REMEDY FOR EXTORTION AND DISCRIMINATION.

By these sections of the Constitution and statutes "rates," "rates of charge," and "change of rates," are a dozen times repeated and made the burden of investigation and regulation, orders and schedules. It follows that extortions and discriminations are not to be remedied by sweeping and perfunctory declarations that they exist and ought to be forbidden, but by reforming the rates in which they are found. To avoid the plodding process of examination, it is possible to assume without proof or knowledge, as is often done, that all are excessive, and, therefore, extortionate. But that *all are unequal*, and, therefore, discriminative, is a solecism too palpable to be excused on the score of any negligence or ignorance. And absurd as it is, it is no more so than the correlative proposition that unequal rates can be equalized, and discriminations eliminated therefrom, by uniform reductions.

While discarding these absurdities, the Commission has settled down to its work upon the theory that extortion may be predicated of each separate rate or class of rates, and, if found to be too high, reduction to reasonable compensation is the rightful remedy; and as discrimination can be affirmed only of two or more rates for similar equal services, and consists in their inequality, the only possible remedy is by changes up or down, to adjust them to each other and to the service. If it is only when rates are thus "established or adopted," changed or regulated, reduced or equalized, by lawful orders and schedules (which, if not waived, are imperatively required), that they are to be "deemed conclusively just and reasonable," it follows that then, and not till then, can fines or forfeitures for their violation be recovered or enforced.

CONSTITUTIONAL PROCESS OF INVESTIGATION AND RULE OF DECISION.

This much debated function of the Commission is defined and guarded with exceptional clearness in the Constitution, and concerning it there should be no confusion of ideas or purposes. Its subject-matters are "rates" and "rates of charge;" its ultimate purpose, to "establish or adopt," or "change" them, "from time to time," so as to eliminate therefrom discriminative inequalities and extortions; its modes of procedure, investigations and comparisons, orders and schedules. Each and every one of eighty thousand existing rates, in its relations to all the rest, and to the governing factors of transportation, is the subject of investigation. What it ought to be, the relative

cost and conditions of the service being considered, is the question to be decided. That it ought to be reasonable compensation for the service, it would be unreasonable to question; and this is the necessary and conclusive inference of the Constitution. For, as it ordains, if rates of charge established by the Commission are to be "deemed conclusively just and reasonable," it is because they have been made and are so upon the principle presumed, which is itself the logical corollary of an otherwise ironical presumption.

THE RULE OF COMPENSATION IMPLIED IN EVERY FRANCHISE FOR
PUBLIC USE—THE RULE IN ENGLAND.

The rule of decision thus clearly embodied in the Constitution, with all its manifold implications, is before and after railroads and Railroad Commissioners. For three hundred years, in the absence of special agreement between the parties, for services rendered or to be rendered, it has been the measure of compensation and of universal application. Grounded in common sense, as a familiar principle of elementary law, it is the "perfection of reason," and has been made authoritative by a long and unbroken series of adjudicated cases. In England it is implied in every franchise for public use, whether by prescription time out of mind, or royal grant; and the duties must be reasonable and moderate, "though settled by the King's license or charter." (8 T. R. 606; 1 Harg. Law Tracts, 6-78; 4 Bacon's Abridg. 158; 12 East. 527.)

THE MEASURE OF CONTROL AND OF COMPENSATION IN THIS COUNTRY.

In this country, "the granting and acceptance of such charter creates a *quasi public trust*, and clothes the public with an *interest in the use* of railroads, which can be controlled by the public to the *extent of the interest therein*." (13 Fed. Rep. 78.) "The road once constructed, is instantan, and by mere force of the grant and law, embodied in the governmental agencies of the State and dedicated to public use." (1 Flippin, 142; 3 Kent, 458.) "And the reason why the use has always been held a public one is, that such a road is a public *highway*, whether made by the Government itself or by the agency of corporate bodies, or even by individuals, when they obtain the power to construct it from legislative grant." (16 Wall. 696.) "In consideration of the franchise they receive from the State, railroad companies agree to perform certain duties toward the public. The power of *determining* these duties and *enforcing* them is vested in the appropriate tribunals of the State." (63 Me. 278.) This power being coextensive with the public interest in such franchise, it may "fix a limit to that which shall in law be reasonable for its use. This limit binds the Courts as well as the people." (4 Otto, 178.)

POWER OF STATE NO LONGER DEBATABLE—RULE OF COMPENSATION
PRESCRIBED BY THE CIVIL CODE GOVERNING FACTORS OF TRANS-
PORTATION.

That the State or her appropriate tribunals have disarmed themselves, or been disarmed of this power, or at all relieved of its responsibility, will not be presumed, for, in the language of Judge
"It is so easy to say so that we will never believe it to be

meant when it is not said." They have, on the contrary, with few dissenting voices, faithfully guarded and affirmed the power, and have armed it with a rule of decision which is in itself no longer debatable. It is in the Civil Code as follows: "A common carrier is entitled to reasonable compensation and no more. If payment thereof be refused he may refuse to carry." (Civil Code, Sec. 2173.) As construed by all the Courts, in innumerable decisions, the language of this section means: "Reasonable consideration," and "for similar equal services" the "same compensation." To the same effect, and distinctly recognizing the equity of the rule, our immediate predecessors in this office unanimously adopted and entered of record the circumstantial declaration that in fixing "fares and freights on the various lines and portions of lines of transportation within this State," and in "determining what is a just and reasonable rate," they would consider the value of the services performed, distance of carriage, volume and direction of traffic, the general character thereof, to be fixed by classification as to volume, weight, value, the liability to accident, climatic influences, competition, grades, curvatures, and cost of maintenance."

THE LAW NO RESPECTOR OF PERSON OR CORPORATION—RULE OF
COMPENSATION FOR SERVICE SUBJECT ONLY TO ITS CONDITIONS—
TO BE APPLIED IMPARTIALLY.

As it is only by considering these underlying factors of the service that the compensation therefor can be made reasonable, the enumeration is important. It is clear cut and comprehensive. Excluding every element foreign to the inquiry, it includes the established tests, not themselves disputable, by which all Courts and Commissions, State and National, are necessarily governed. Without preference of person or corporation, owning and operating railroads, they apply to all alike, and relate to service and not to subsidies; to the continuing basis of charges for fares and freights, and not to the financial backing nominated in government bonds; to the present condition of existing railroads, and not to the eventful epoch when gigantic forces of peace and war conspired to build them.

GOVERNMENT DONATIONS AND LOANS OF CREDIT FOR THE CONSTRUCTION OF RAILROADS NOT OFFSETS TO CHARGES FOR SERVICE THEREON—THE GOVERNMENT AND PRIVATE PARTIES PASSENGERS ON THE SAME TRAIN.

Opposed to these principles and conclusions of law, there is only the unreconciled afterthought that government loans and donations for the construction of the Central Pacific, and other overland roads, were or might have been intended as offsets to charges for their operation. But the granting Acts, as ratified by the Legislature of the State, provide that such roads shall perform government service, "*at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service.*" Here again is the common law rule of service, and "for the same kind of service," the same compensation. This would be plain enough without the express limitation to "amounts paid to private parties," whose rights are not affected by anything in the contract. And in an opinion upon the clause quoted, and directly to the point, the Supreme Court

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of the United States has said: "The compensation at fair and reasonable rates, must be considered upon all the facts material to the issue, not to exceed the amount paid to private parties for the same kind of service." (The Union Pacific Railroad Company vs. United States, 14 Otto, 667.) Nothing, therefore, can be more evident than that the brilliant conception of reversionary bounties, and loans payable to the Government, but due to everybody, and subsidies that are perpetual surcharge of fares and freights, was inspired by the "wisdom that comes after the fact."

CONCLUSIONS OF LAW UPON PRINCIPLES OF ADJUDGED CASES.

For obvious reasons, the Commission has given due precedence and prominence to the law by which it was created and must be governed. In doing so it has endeavored to outline its own legal status and sphere of action, and to solve the puzzling and irrelevant problems into which its powers and duties are too often resolved. Generally and briefly, its conclusions are as follows:

First—It is a constitutional tribunal, with well defined official functions, to be exercised, subject only to the requirements of law, with becoming independence and impartiality in the interest of all concerned.

Second—Its judicial power to hear and determine complaints presupposes parties of record to be heard and specific issues between them to be determined, and is to be exercised "in the same manner and to the same extent as by Courts of record."

Third—Its remedial powers and duties relate exclusively to rates of charge for fares and freights, and when regularly exercised in the mode prescribed, its decisions are *prima facie* "just and reasonable."

Fourth—To make them in fact what they are presumed to be, they must, without preference of person or corporation, be based upon the varying conditions of the service, and be a reasonable recompense therefor.

Fifth—This is the rule of compensation for Government service incorporated in the Acts of Congress to aid the construction of the Central Pacific and other overland roads, and estops the Government, and *a fortiori* all other parties, from discriminating against them in payments for transportation thereon.

Sixth—The circumstantial and conditional factors of transportation are the admitted and necessary criterions of its cost and value, and are each and all of them inconsistent with any theory of unconditional uniform rates of fare and freight.

Seventh—To impose such rates upon the Central Pacific Company and leased lines under its management, at rentals ranging from \$100 to \$5,194 per mile, would be to make some of them bankrupt pensioners upon others; to convert relations beneficial to all into penalties upon such as have the least to gain by them; to substitute for reasonable compensation a rule of rank injustice, subject to which not one of them could have been constructed, and to arrest their extension to districts in squalid want of them, upon the mere pretense of favoring those who have them.

PROCEEDINGS AND METHODS OF THE COMMISSION CHRONOLOGICALLY
STATED AND REVIEWED.

The foregoing analysis of the law and rules of practice governing the Commission in both branches of its jurisdiction will serve to explain its acts, proceedings, and methods, what it has done, and declined to do.

On the ninth day of January, 1883, a resolution styling itself a schedule, and purporting, as such, to reduce rates of fare on the railroads named therein, was introduced by Commissioner Foote, as follows:

First—

Resolved, That the Board of Railway Commissioners of the State of California do hereby establish and adopt the following schedule of rates of charges for the transportation of passengers on the lines of railroad in this State, owned, leased, controlled, or operated by the Central Pacific Railroad Company or the Southern Pacific Railroad Company: 1. The rates for the transportation of passengers over the age of twelve years are hereby fixed and established at the sum of three cents per mile. 2. The rates for the transportation of passengers over the age of five and under the age of twelve years, are hereby fixed and established at the sum of one and one half cents per mile. *Provided*, that where any of such railroad companies have heretofore, by reason of competition, or for any other reason, reduced or fixed their rates for the transportation of passengers and their baggage, or for passengers only, at a sum equal to or less than the rates hereinbefore named, then in such cases said rates shall not be raised or increased.

QUESTIONS FOR THE RAILROAD COMPANIES.

Second—

Resolved, That the various railroad companies of this State are hereby requested, under oath, through their President or Secretary, to answer the following interrogations:

1. What has been the total cost of your road and equipments to date? If any company owns, operates, or controls more than one line of road, please state the cost of each separate line.
2. What were your gross earnings for the year 1882?
3. What were your operating expenses for the year 1882?
4. State the per cent of operating expenses as compared to gross earnings for each year since the road has been in operation.
5. What is the total value of all your property in this State at this time?
6. What was the total amount of taxes assessed against the road in this State during the past fiscal year? Please state assessed valuation in each county of this State, and, also, whether the taxes assessed have been paid.
7. Please furnish a schedule of the rates of fare and freight charged by you in this State.
8. How much of your gross earnings came from local passengers? How much from local freights?
9. What were your total expenses for salaries to employes for the year 1882? Please state the names, official designations, and salaries of every person in your employment in any capacity whatever, who receives as much or more than \$5,000 per annum.

Although introduced in advance of the research and reflection which would have been fatal to them, the evident insufficiency of these resolutions for any purpose was enough to preclude the dangerous experiment of their adoption. The first of them, taken as the best evidence of what it was intended to be, and of its own method and principle of reduction, or want of both, has no reference whatever to the law or the facts. Tested by the law which prescribes "orders," "decisions," and "schedules," it is neither in form nor substance what it purports to be, and is a mere nullity. Considered as a recommendation of arbitrary uniform rates, not based upon any relation or proportion of operating expenses or profits in the passenger and freight departments of any road, nor upon the cost of any service in either of them, it was as easily postulated before as after investigation. Regarding it, therefore, as a palpable mistake of legal requirements and essential principles, and adapting the second to its ostensible object, they were both superseded by a substitute intro-

duced on the fifth day of February, 1883, by Commissioner Carpenter, as follows:

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA.

In the matter of resolutions Nos. 2 and 3, introduced by W. W. Foote and now pending before the said Commissioners.

The investigations commenced by said resolutions and now on this day resumed by said Commissioners upon their own motion, without petition, complaint, or any evidence of record herein; and it appearing that said resolution No. 2 is, by its terms, confined to rates of charges for the transportation of passengers on the lines of railroad in this State owned, leased, controlled, or operated by the Central Pacific Railroad Company or the Southern Pacific Railroad Company; and it appearing to said Commissioners that this investigation and the evidence taken therein should relate to the general subject of fares and freights, and furnish a basis and a reason for the revision and reduction of both, upon any or all of the railroads or other transportation companies of this State; and it appearing that for such purpose the scope and requirement of said resolution No. 3 should be so enlarged and outlined that the power conferred by the Constitution and laws shall be duly and regularly exercised as therein prescribed: Now, therefore, as a substitute for said resolutions, it is ordered by said Board of Commissioners:

First—That they will proceed in accordance with the following provision of the Constitution: "To establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose to issue subpoenas and all other necessary process."

Second—Having taken, examined, and considered the documentary and other evidence necessary to an intelligent and equitable revision and reduction of charges for fares and freights by railroads or other transportation companies of this State, they will prepare and, as required by the Statutes of 1880, Chapter 59, Section 11, "serve a printed schedule of such rates, and of any changes which may be made in such rates, upon the person, copartnership, company, or corporation affected thereby."

Third—To accomplish the practical purposes aforesaid with becoming order and dispatch, only such testimony, exhibit, or report shall be deemed relevant or material as tends, subject to the following rules and principles, to show: 1. The corporate name and principal place of business of any transportation company mentioned in Section 14, Chapter 59, Statutes of 1880; 2. The names, places of residence, and compensation of all officers and agents employed by or on behalf of such company in the business of transportation or in operating any railroad of such company; 3. The length and termini, character and equipments, stations and terminal facilities, capacity for freight and passenger service, rates of charges, through, local, and special, resources and financial condition, and general business of any such railroad, or feeder, and branches.

Fourth—The present and prospective value of any such road, feeders, or branch, as a source of income or means of earning it, to be estimated and determined as if for any other purpose; the cost of construction to be taken and considered as an element, but not as a conclusive criterion, of value.

Fifth—What should be deemed a reasonable profit on such value, and what rates of charges for fares and freights on such road, branch, or feeder, will pay the company owning and operating the same, cost and risk of service, interest on its bonded and floating debts, the sum of taxes paid, and such reasonable profit as aforesaid.

Sixth—The fair apportionment of such rates as aforesaid, with due regard to the relative cost of service, and such regulations as are usual and proper for railroad companies, to the passenger and freight departments respectively.

Seventh—The repairs and renewals, betterments and extensions, in this State, necessary to the safety, public use, or successful operation of any such road, feeder, or branch, and the nature, extent, probable cost, and subsidiary interest of all concerned therein.

Eighth—The rates of charges for all classes of fares and freights established, exacted, or received by any transportation company in this State, under special contracts, private instructions, or published schedules, and the reasons, rules, regulations, and classifications by which they are all and severally governed and enforced.

Ninth—It is also ordered that an attested copy of the following circular letter, No. 2, be forwarded by mail to the President, Secretary, or General Superintendent of each Railroad Company in the State:

CIRCULAR LETTER NO. 2 (SUBSTITUTED FOR NO. 1).

OFFICE OF THE BOARD OF RAILROAD COMMISSIONERS }
OF THE STATE OF CALIFORNIA. }

To —, Esq., of the — Company:

DEAR SIR: Having under consideration the rates of charges and methods of business in force in the passenger and freight departments of the transportation companies subject to your supervision in this State; and in the interest of all concerned desiring to make only such revision and changes of existing schedules, classifications, and rates of charges as upon examination and reflection we shall deem just and reasonable, we respectfully and urgently request that at your earliest convenience within twenty days, if you have not already done so, you

prepare and file in this office, verified statements and exhibits in answer to our first circular letter, to wit:

First—What has been the total cost of your road and equipments to date? If any company owns, operates, or controls more than one line of road, please state the cost of each separate line.

Second—What were your gross earnings for the year 1882?

Third—What were your operating expenses for the year 1882?

Fourth—State the per cent of operating expenses as compared to gross earnings for each year since the road has been in operation.

Fifth—What is the total value of all your property in this State at this time?

Sixth—What was the total amount of taxes assessed against the road in this State during the past fiscal year? Please state assessed valuation in each county of this State, and, also, whether the taxes assessed have been paid.

Seventh—Please furnish a schedule of the rates of fare and freight charged by you in this State.

Eighth—How much of your gross earnings came from local passengers? How much from local freights?

Ninth—What were your total expenses for salaries to employes for the year 1882? Please state the names, official designations, and salaries of every person in your employment, in any capacity whatever, who receives as much or more than \$5,000 per annum.

Tenth—What amount of money do you pay as rent for each of your leased lines? Please state the rent per mile, as well as the gross sum for each line.

In addition to the information heretofore requested of you, we desire further statements and exhibits showing:

First—The name and principal place of business of your railroad company.

Second—A general description of the line or system of railroads it owns and operates.

Third—The same of the road or roads within this State.

Fourth—The inter-State connections of the overland roads, and their local relations to each other and to their respective feeders and branches.

Fifth—The reasons, if any, for differential rates on a system of coöperating roads.

Sixth—The extent to which such feeders and branches are dependent for continued existence and operation upon the trade and travel tributary to each.

Seventh—The ways and means for repairs, renewals, betterments, and extensions necessary to the safety, public use, and continued operation of such feeders and branches, or any of them.

Eighth—For what section and what proportion of the population and productions of the State is your road, or system of roads, the only means of transportation?

Ninth—At what points along its main line within this State does it meet with rival carriers by rail, river, or ocean, and for what percentage of its gross earnings does it compete with them?

Tenth—The alleged special contracts, or underbidding system of contracts, at such competitive point or points, under which your company performs stipulated service for contracting shippers on terms not open to all rival shippers and carriers.

Eleventh—State the average difference, if any, between contract and competitive rates for equivalent service at such points. A sample copy of such contract is requested.

Twelfth—Approximate the average difference between such special rates at such points, and schedule rates at non-competitive points?

Thirteenth—From a comparative estimate, what are the relative average rates of through and local freights?

Fourteenth—When and why are both collected, if at all, on through shipments to and from non-competitive points?

Fifteenth—What is the total income for the year ending December 31, 1882, of your road in California, from local freights on through shipments.

Sixteenth—What share of joint earnings from through freights prorated with its overland connections is received by your road in California?

Seventeenth—What, for the year last mentioned, were its total earnings from freights of all classes?

Eighteenth—What for the same year were its total operating expenses in freight department?

Nineteenth—How far does the relative cost of service in the freight and passenger departments of your road control the rates of charges for fares and freights?

Twentieth—What are the maximum and minimum and average rates of fare per mile for through passengers on your road in this State?

Twenty-first—The same for local passengers, excluding fares of Oakland Ferry?

Twenty-second—What is the percentage of expenses to earnings from each class of passengers, and percentage of net income from each to total operating expenses incurred for both?

Twenty-third—Percentage of expenses to earnings in passenger department?

Twenty-fourth—Percentage of expenses to earnings in freight department?

Twenty-fifth—Percentage of total expenses to total earnings in both departments?

Twenty-sixth—Percentage of net income in each to total net earnings in both?

You are also invited, by counsel or otherwise, to submit to our consideration such other facts and principles relative to the management and operation of your road as you may deem of interest to your company or the public.

Very respectfully,

For the substitute, Commissioners Humphreys and Carpenter, and against it Commissioner Foote. It was, therefore, duly adopted and passed, and the first instructive response thereto will be found in Appendix A. As the first effort of the Commission to outline for itself a legal method and course of inquiry and action, it may be improved but not successfully assailed. The valuable accumulation of reliable facts and statistics in which it has resulted has enabled the Commission to inaugurate a safe, steady, and forward movement in the confidence and strength of that intelligent conservatism which is progress in the right direction.

The following Amended Rules of Procedure were introduced by Commissioner Carpenter on the nineteenth, and unanimously adopted on the twenty-sixth of February, 1883. They define the functions of the Commission, simplify the pleadings, restrict the evidence and determination, to the parties and the issues in the case, and subject only to the statute, abolish dilatory proceedings, and deny rehearings in cases decided, except upon the record within ten days thereafter :

AMENDED RULES OF PROCEDURE OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA.

[Adopted February 26, A. D. 1883.]

RULE I.—To regulate, establish, or change the rates of charges and schedules of fares or freights of any transportation company in this State, said Commissioners will proceed upon their own motion, or upon the complaint of any person or persons demanding relief, and having an interest therein.

RULE II.—In any case of alleged extortion, discrimination, or other abuse, by any transportation company in this State, subject to the cognizance and control of said Commissioners, they will proceed, upon the complaint of the person or persons injured thereby, to hear and determine the cause of such complaint, and will exercise the remedial and judicial powers conferred by the Constitution, as required thereby, to wit: "In the same manner and to the same extent as Courts of record, and to enforce their decisions and correct abuses through the medium of the Courts."

RULE III.—Such complaint as aforesaid, when presented at the office of said Commissioners, shall be filed by the Secretary, who shall, at the request of the complainant, issue a summons thereon.

RULE IV.—The summons must be directed to the defendant, must be signed by the Secretary, and attested by the seal of the Commissioners, and must contain :

1. The names of the parties to the proceeding.
2. A statement of the nature of the complaint.
3. A direction that the defendant appear and answer it within fifteen days after service thereof.

RULE V.—The summons may be served by the Bailiff of the Commissioners, or by any citizen of the State, and shall be served by delivering a copy thereof, together with a copy of the complaint, to the defendant, or if the defendant is a corporation, to the President, Secretary, Treasurer, or Managing Agent thereof. Proof of service of summons and complaint must be as follows :

1. If made by the Bailiff, his certificate thereof.
2. If by any other person, his affidavit thereof.

RULE VI.—From the time of the service of the summons and the copy of complaint, the Commissioners shall be deemed to have acquired jurisdiction of the parties and subject-matter. The voluntary appearance of the defendant is equivalent to personal service.

RULE VII.—The complaint must contain :

1. The names of the parties to the proceeding.
2. A statement of the cause of complaint, in ordinary and concise language, giving such particulars of time, place, and circumstances as may enable the defendant to answer the same intelligently.
3. A demand of the relief claimed.

RULE VIII.—The defendant may, within the time required in the summons to answer, object to the complaint upon the following grounds :

1. That it does not state facts sufficient to authorize the proceedings.
2. That it does not conform to the requirements of Sec. 9, Chapter 59, Statutes of 1880.

RULE IX.—If the objection be sustained, the complainant may amend his complaint. If the objection be overruled, the defendant may answer the complaint.

RULE X.—The answer of the defendant may contain :

1. A general or specific denial of the allegations of the complaint controverted by him.

2. A statement of any new matter of defense, or in mitigation or explanation of the charges made in the complaint.

RULE XI.—The complainant may, upon service of the answer, object to the same as insufficient, and if the objection is sustained the defendant may amend his answer.

RULE XII.—The complaint, answer, and demurrer must be subscribed by the party, his authorized agent or attorney. The complaint and answer must be verified as required by the Code of Civil Procedure in civil cases.

RULE XIII.—Upon the appearance, answer, or default of defendant, the Commissioners shall promptly hear and determine the cause of complaint, and upon the law and the facts shall render and file in their office a decision in writing, signed by the Commissioners concurring therein. Within ten days thereafter, upon a petition by either party based upon the record in the case, such decision may be modified or changed by order of the Commissioners, setting forth the reasons therefor.

RULE XIV.—The Secretary of the Commissioners must keep a calendar of cases pending before them, in their chronological order; and in a suitable book, properly indexed, shall enter all orders and decisions of the Board.

RULE XV.—The provisions of Part IV of the Code of Civil Procedure, relating to the general principles, kinds and degrees, production and effect of evidence, and of the rights and duties of witnesses, shall be applicable to proceedings before these Commissioners.

RULE XVI.—These rules may be amended at any regular meeting of the Commissioners, and amendments so made shall go into effect in ten days thereafter.

RULE XVII.—These rules shall be in force from and after the first day of March, 1883.

The cases to which the foregoing rules mainly apply, are those of individuals against railroad companies for alleged overcharges, discriminations, or other abuses within the jurisdiction of the Commission. When by letter or otherwise, its interposition has been invoked for the correction of these special grievances, they have been referred in the first instance for information or adjustment to the responsible company. Thus, in some cases, it has been found that there had been a mistake of facts, or of rules and regulations usual and proper in the premises; and, in others, the causes of dispute have been promptly adjusted to the satisfaction of all concerned. In but three cases have verified complaints been filed under and in accordance with the statute and rules of procedure. Two of these, namely: *Palmtag and Bernhardt vs. The Southern Pacific Railroad Company*, and *W. H. Robinson vs. The Central Pacific Railroad Company*, are pending upon issues of law, not yet argued or submitted. The first on the calendar is the case of *Richards & Harrison vs. The Central Pacific Railroad Company*, which was commenced on the sixth day of February, 1883, and on the twenty-sixth day of February, 1883, was argued, submitted, and taken under advisement. On the twenty-ninth day of May, by reason of the law and the facts, fully and carefully considered, with due regard to the parties and the issues, the case was finally decided against the complainants. And holding, as the Commission does, that the long and patient trial of the case was properly before and not after judgment, it submits without irrelevant gloss or comment, the majority opinion of Commissioner Carpenter, specially concurred in by Commissioner Humphreys, and also the dissenting opinion of Commissioner Foote.

TEXT OF OPINION BY G. J. CARPENTER.

Richards & Harrison, Plaintiffs, vs. The Central Pacific Railroad Company, Defendant.

This cause is the first of its class on the calendar of this Commission. It has a history which has been kept prominently before us, and much of which has served only as an intruding element of confusion. We are thus reminded that it has been the subject of inconsequential private interviews between the parties, and of acrimonious partisan agitation, not at all conducive to an impartial consideration of the law or the facts. And we make this reference to what preceded our cognizance of the case, only to say that no political or other organization is a party thereto, or can dictate or influence a word of our decision. Dispassionately and rigidly excluding from consideration the motives and incidents of a controversy neither relevant nor

material to the issues we are to decide, and confining our findings and decision to the real issues in the case, as it has been made and submitted by the parties, neither of them will be helped or harmed by anything not properly involved therein.

THE PLEADINGS SUMMARIZED—COMPLAINT.

In substance and effect, complainants allege in a verified complaint that they have been subjected by the defendant to a "special contract extortion equal to about fifty dollars per carload in excess of any other importers in the same line of imports." That "being the most extensive importers of certain classes of goods," they were subjected to such overcharge because of their declining to sign the obnoxious document, which had been signed by "all other importers in the same line of imports." That complaint was made to the freight agent of defendant, "stating that owing to the miscellaneous nature of this firm's trade they could not sign a special freight contract," and also asserting their "right to import goods from certain constituencies by sea," for the reason that they could not "bear the burden of rail charges." That being denied contract rates upon their shipments of bottled beer from the City of Milwaukee, Wisconsin, they shipped by rail and water via New York and Cape Horn for about two years. That thereupon the Milwaukee "shippers were threatened that if they shipped any more goods around the Horn to Richards & Harrison, their manufactures would be by discrimination denied admission to Montana, Idaho, and all markets along the line." That complainants called on the directory of the road but to find that no justice or satisfaction could be obtained, and having "sufficient foreign constituencies," they were enabled to defy and "free to expose the existing tyrannies." That to make a test case they instituted a protest against the mentioned "extortion and overcharges," and also against the portion of such charges as had been advanced for said complainants by defendant to its "connecting roads." That the Central Pacific Railroad Company nevertheless carried out their threat and have since notified all connecting roads not to carry Richards & Harrison's freight unless paid in advance. This is a full and accurate statement of such issues as are tendered by the complaint. In the absence of its averment, we take official notice of the jurisdictional fact that defendant owns and operates a railroad within this State, and is therefore a common carrier and subject to our cognizance.

ANSWER OF DEFENDANT.

Defendant accepts such issues as are tendered by complaint, and denies that because they "declined to sign the obnoxious document," they have been subjected to the alleged extortion or any overcharge. Admits that they have paid defendant its proportion of open tariff rates on west bound freight, but avers that while doing so they had the offer of the same reduced rates upon the same conditions as all the persons receiving such freight at San Francisco. That such offer was subject only to the terms of what are known as special contracts, which are at the option of all shippers at said city. Denies the alleged threat and discrimination against the Milwaukee or other shippers, or their manufactures, or to exclude them from Montana, Idaho, or other place or market. Admits that one of the complainants called on the general freight agent of the defendant, but denies that "no justice or satisfaction could be obtained," sets up the interview with what was said and done thereat as a part of the answer. It appears therefrom, as an undisputed averment, that the only justice or satisfaction which complainants proposed and were willing to accept, and cease their opposition, political and otherwise, was a contract by defendant, to protect them against Vining, and to give them the lowest rates, upon terms of their own which they required to be put in writing, "for four years, three months before the next election." Defendant admits that it declined to make such special terms in favor of complainants, or to advance or collect freight charges for their account due to connecting carriers. That of the through rate from Milwaukee to San Francisco, of two dollars and twenty-five cents per hundred pounds, the proportion earned and received by defendant is eighty-eight and seventy-two one hundredths cents, which it collects on delivery of freight to complainants at the City of San Francisco.

PROVISIONS OF THE CONSTITUTION CONFERRING AND LIMITING THE POWERS OF THE COMMISSION.

Of extortion and discrimination by railroad and other transportation companies in this State, the remedial jurisdiction of this Commission is concurrent with, and subsidiary to, that of the Courts. It is conferred upon the Commission by the Constitution, Article 12, Section 22, as follows: "Said Commissioners shall have the power, and it shall be their duty * * * to hear complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts." It is reserved and continued in the Courts as follows: "Nothing in this section shall prevent individuals from maintaining actions against any of such companies."

STATUTORY PROVISIONS AND MODE OF PROCEDURE.

An Act to define the powers of the Board of Railroad Commissioners, approved April 15, 1880, creates the offices and prescribes the duties of Secretary and Bailiff, provides for seal and

authentication of process, that it may be "issued in like manner as by Courts of record," "shall extend to all parts of the State," may be served by Bailiff or "any person authorized to serve process of Courts of record," who shall make return of the same.

It also enacts as follows: SEC. 9. "All complaints before said Board shall be in writing and under oath. All decisions of said Board shall be given in writing and the grounds of the decisions shall be stated. A record of the proceedings of said Board shall be kept, and the evidence of persons appearing before said Board shall be preserved."

SEC. 10. "Whenever the Board shall render a decision within the purview and pursuant to the authority vested in the Board by Section 22, Article 12, of the Constitution, said Board, or the person, copartnership, company, or corporation making the complaint upon which such decision was rendered, is authorized to sue upon such decision in any Court of competent jurisdiction in this State."

The Constitution and laws must be regularly and strictly pursued.

Besides the foregoing headlights, there are many decisions of Courts and Railroad Commissions relating to the jurisdiction and functions of similar bodies in analogous cases. And it is to make this case, if only to that extent, a precedent in others of its class, that we have taken from the Constitution and laws of the State the measure of our authority and the mode of its exercise. And whether the Commission is more a Board of Arbitration than a Court, or a cross between them, is, perhaps, not very important. For however, in either capacity, we may relax judicial rules of pleading and evidence, as we have done even to looseness in this case, it is only by due process of law that we can obtain jurisdiction of parties or subject-matter or render a valid decision. Without such process our award as arbitrators would be *nullum arbitrium*, and our order or decision, whatever its official rank, a new cause of mutual misunderstanding. The supposition, therefore, that this Commission belongs to no department of the Government, and is subject to no legal limitations, that it may substitute equity for law, and arbitrary discretion for both, can only serve to defeat its legitimate purposes, and should never control its action. It is nevertheless true that like the Courts, although not one of them, it has a law and an equity side, equally and easily accessible. But equity follows the law, and this Commission, were it a Court of Chancery, should follow it also. (Cohn vs. Barrett, 5 Cal. 195. Winter vs. Fitzpatrick, 35 Cal. 369. Gray vs. Hawes, 8 Cal. 562. Chester vs. Connecticut, etc., R. R. Co., 41 Conn. 348. People vs. Dutchess, etc., R. R. Co., 58 N. Y. 152. Boston and Worcester R. R. Co. vs. Western R. R. Co., 14 Gray, 253.)

DEFENDANT AND ITS CO-OPERATING ROADS NOT PARTNERS INTER SE OR AS TO THIRD PARTIES.

The defendant is expressly authorized by the Constitution, to connect at the "State lines with railroads of other States."

"Art. 12, Sec. 17. It cannot 'combine or make any contract with the owners of any vessel that leaves port, or makes port in this State,' by which combination or contract, the earnings of one doing the carrying are to be shared by the other not doing the carrying." In these provisions are clearly implied the limits of our control, and the legality of any connection, combination, or contract between the defendant and other common carriers designated, whereby the earnings of all are to be shared by each in the proportion of its separate service. And such substantially, as shown by the record in this case, is the connection and combination of the defendant with the companies making the alleged overcharges for services, as per bill of lading on file herein.

Their relations to each other, therefore, whether dictated by considerations of individual self-interest, or the reciprocities of mutual advantage, have the sanction of law. They are, moreover, those of cooperating carriers, respectively owning and operating their several roads, under separate management, and sharing earnings in the proportion of their separate service; and are not those of partners *inter se*, or as to third parties. (Montgomery, etc., R. R. Co. vs. Moore, 51 Ala. 394. Ellsworth vs. Fratt, 26 Ala. 733. Pattison vs. Blanchard, 1 Seld. 186. Converse vs. Norrich, etc., Trans. Co., 33 Conn. 166. Gass vs. The Railroad, 99 Mass. 220.)

RELATIONS OF INTERSECTING RAILROADS PRESCRIBED BY ACTS OF CONGRESS, JUDICIALLY CONSTRUED.

Beyond the limits of the State the connection and use in continuous lines of railroads under separate ownership and management, are authorized and required by the Federal Government. By an Act of Congress (U. S. Rev. Stat., Sec. 525, p. 1012), "other railroad companies are authorized to connect their roads with the Union Pacific Railroad, or any of its branches." By the enlarging Act of June 15, 1866 (U. S. Stat., Sec. 5258), it is provided that every railroad company in the United States * * * is hereby authorized to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, government supplies, mails, freight, and property, on their way from one State to another State, and to receive compensation therefor, and to connect with roads from other States so as to form continuous lines for the transportation of the same to the place of destination." In Council Bluffs vs. Kansas, St. Joseph and Council Bluffs Railroad Company, 45 Iowa, 338, the Court, by Miller, J., said: "It was intended that the cars themselves, with their burdens, should be transported from one road to another, so that passengers and freight might be transported from ocean to ocean without change of cars, or breaking bulk, as upon one continuous line." (See, also, to the same effect, Railroad Company vs. Richmond, 19 Wall. 584.) Thus, while no presumption of partnership or joint liability arises from such connection and operation, the obligations inferred therefrom by complainants would make all the

intersecting railroad companies in the United States their agents to pay advances on freight transferred from one to another, and would render them jointly liable for a breach of such duty. Upon this theory any company, by its special contract, could bind its connecting lines.

THROUGH RATES CONTRACTED BY BILL OF LADING.

To avoid such a conclusion, it is urged in argument by complainants, that while we have no power to relieve them against the alleged overcharge, nevertheless so much thereof as was received by the defendant is subject to our order. The point presupposes some proof of extortion, which we need not consider here, and also ignores the entirety of the contract as to rates between the contracting carrier and complainants. From the bill of lading in evidence, it appears that Voechting, Shape & Co., of Milwaukee, Wisconsin, are the consignors, Richards & Harrison, the consignees, and the Chicago, Milwaukee and St. Paul Railway Company, by its through fast freight line, was the receiving and contracting carrier of the bottled beer which is the subject of the consignment. There is in it the clause following: "This bill of lading contracts rates from Milwaukee, Wisconsin, to San Francisco, Cal., via U. P. Ry."

THE LAW APPLIED TO THE FACTS.

The only special contract in this case, to which complainants and defendant are parties, is the bill of lading in evidence, which contracts rates from Milwaukee, Wisconsin, to San Francisco, at two dollars and twenty-five cents per hundred pounds for the whole distance. It is the sum of these through rates in excess of two dollars per hundred pounds, which is alleged to be an overcharge of about fifty dollars per carload. And to make this a test case complainant protested against the through charges, including the portion thereof received by defendant on three consignments. It was because complainants protested against the payment of advances made for them by defendant to its connecting carriers that it finally notified them that no further advances would be made. Of its right to refuse accommodation advances, and also continued credit for its own share of the service, the Code is conclusive. It is as follows: "A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused he may refuse to carry." (Civil Code, Section 2173.)

This is only the codified rule of the common law, familiar to every man of business, and the same in every State in the Union. If, therefore, our decision were against defendant as to its share of the alleged overcharge, its connecting and contracting carriers might evade it with impunity by collecting through rates in advance. If, on the contrary, like the protests of complainants, it were aimed at the through charge, as per bill of lading in its entirety, it would be a nullity in three sovereign States and two Territories. And the Courts of the State in which the contract was made, and partly performed, would enforce it against resident shippers and carriers. (McDaniel vs. Chicago, etc. Ry. Co., 24 Iowa, 412. Brown vs. Camden, etc. R. R. Co. 83 Pa. St. 316. Milwaukee, etc., R. R. Co. vs. Smith, 74 Ill. 197. Baw Knight vs. Liverpool, etc., Ins. Co., 55 Ga. 194. Lathrop vs. Union Pacific R. R. Co., 1 McArthur, 234.)

QUESTION OF JURISDICTION—ADJUDICATED CASES.

But a decision without jurisdiction of parties or subject-matter, bad and ineffective as it must necessarily be, would be still more impotent if in conflict with the jurisdiction of the Federal Government, which, to the extent that it has been exercised in making the road of defendant a continuation of all connecting lines for purposes of inter-State commerce, is exclusive of State supervision. (Council Bluffs vs. Kansas, St. Joseph and Council Bluffs Railroad Company, 45 Iowa, 339. Crandall vs. State of Nevada, 6 Wall. 35. Gilman vs. Philadelphia, 3 id. 713. Cooley vs. The Board of Wardens, 12 How. 399.)

While giving the benefit of every doubt to State rights, and believing that they should be resolutely exercised up to their constitutional limits, we can neither reverse nor resist the latest and most authoritative decisions of the Federal Courts. Their peculiar force in this case is found in the fact that it involves the construction of a contract relating to inter-State commerce and to the rights of non-resident parties, holding the relation to each other of connecting and coöperating carriers, by force and virtue of Congressional enactments and State recognition, and that the defendant itself is a resident of two States and one Territory. (U. S. Constitution, Art. 1, Sec. 8. United States vs. Union Pacific Railroad, 95 U. S. 79. Railroad Company vs. Hanover, 95 U. S. 465. Hall vs. De Cuir, and cases there cited, 95 U. S. 488.)

THE ALLEGED THREAT OF THE UNION PACIFIC RAILROAD COMPANY TO DISCRIMINATE AGAINST VOECHTING, SHAPE & CO., OF MILWAUKEE.

In view of these constitutional limitations as settled by the most liberal construction, it will not be assumed that the alleged "foreign constituency" of complainants are within them. Like the merchants of San Francisco, with one exception, they are strangers to this case. From none of them have we any complaint, other than that of Voechting, Shape & Co. It consists in an alleged threat of the Union Pacific Railroad Company, by its agent, Vining, to so discriminate against the beer of said firm as to exclude it from Montana, Idaho, and all markets along the line. It comes from their traveling agent, Anneka, to his principals at

Milwaukee, from them at second hand to Richards & Harrison, from them to Stubbs, and from Stubbs to us. After all its repetitions in this case and elsewhere, it is only hearsay, unverified by Anneka, and denied by Vining. Defendant denies that it ever executed or was a party to the threatened discrimination, and the evidence shows that at the time of the alleged threat, Stubbs, on behalf of defendant, was waging war against the offending Union Pacific Company to be let into Montana and Idaho. Besides, there is no evidence in the case showing that the alleged threat was ever made. It is neither plead nor proved that the threatened firm ever had a customer to lose, or any trade or market to suffer, or any rival to profit, by discrimination, actual or threatened. Its denial, therefore, by defendant, was superfluous, and we refer to it only to clear up the record in this case.

SPECIAL CONTRACTS CONSIDERED WITH REFERENCE TO CONTRACTING RAILROAD COMPANIES.

It is for this purpose that we must take some notice here of what are known as special contracts. In this case, our knowledge and jurisdiction of them, severally and as a system, rest upon a blank form, put in evidence by the defendant, from which it appears that the parties thereto of the first part are the Union Pacific Railway Company, the Atchison, Topeka and Santa Fé Railroad Company, the Missouri Pacific Railway Company, and the Galveston, Harrisburg and San Antonio Railway Company. Besides the contracting parties mentioned, more than thirty Eastern companies, owning and operating roads radiating in intersecting lines and systems from the Atlantic seaboard to points on and west of the meridian of Council Bluffs, Kansas City, and Galveston, are designated as subsidiary carriers of west-bound through freight at contract rates. As shown by the testimony of Messrs. Gray and Stubbs, earnings are prorated to roads performing service upon the basis of mileage, the greater cost of service on the Union and Central Pacific roads being admitted by the Eastern companies and compensated by constructive distance. As between the companies interested, the arrangement presented by the evidence is but a practical illustration of what is said in a standard work on railways, by Marshal M. Markman, page 289, as follows: "All vicissitudes of the traffic have to be considered in making the through rate. After the through rate has been determined upon, the proportion to be allotted to the several lines performing the service is of course a matter of agreement among them." In *Munhall vs. Pennsylvania Railroad Company* and *Allegheny Valley Railroad Company*, 92 Pa. St. No. 156, in a well considered opinion by one of the ablest Courts of this country, it is said: "These two companies had the right, either for their own convenience or for the convenience of the refiners and shippers, to require the whole freight on refined oil to be paid to the one that first carried it. The right of connecting railroad corporations to make contracts for through rates is incident to their powers, unless prohibited by their charters."

THEIR GENERAL POLICY AND THE RIGHTS OF CONTRACTING MERCHANTS NOT INVOLVED IN THE CASE.

It is in evidence, and not contradicted by any witness, that these foreign companies, in consultation with the agents of defendant, and with contracting merchants of San Francisco, make the rates and prescribe the special conditions of the all-rail service from the Atlantic seaboard to California. It is also shown by uncontradicted testimony, that subject to these conditions all shippers of west bound merchandise are equally favored, and that all in this city but complainants in their line of business, have availed themselves of the so called special contracts. These contracts can be annulled or rescinded only at the suit of those who have become parties thereto by "mistake, duress, menace, fraud, or undue influence," or as to whom there has been some breach of condition or failure of consideration. (Vide Civil Code, Section 1689.) But after the most ample opportunity to obtain it there is no evidence here that of all the merchants who have made such contracts, including Mr. Bach, who was a witness before us, any one of them desires to be released therefrom, or that any condition thereof shall be annulled, rescinded, or reformed.

In this connection, it must be remembered that the complainants are not here in the representative character of relators for the contracting shippers and merchants of San Francisco, whose loss of "liberty, manhood, and independent position as merchants," seems not to have been realized by themselves. And until they in person, or by some one competent to complain for them, shall assail their contracts, they will be presumed to be mutually satisfactory to the parties, and to bind the contracting companies. "A written agreement by a common carrier to transport merchandise for another, from one place to another, for a certain period at a fixed price, is a binding offer for that period." (*Harvey vs. Connecticut and Passumpsic Railroad*, 124 Mass. 421. *Wheeler vs. U. P. R. R. Co.*, 31 Cal. 46. 1 *Redfield on Railways*, Sec. 146.)

CONSTITUTIONAL AND JUDICIAL TESTS OF ALLEGED DISCRIMINATION.

Holding, therefore, that any order assuming jurisdiction of contracts between those not parties to this case, would be *dehors* the record and without due process or authority of law, there remains to be considered only the alleged extortions and discriminations. If, for the same service, under identical conditions, not open to complainants, they have paid higher rates than those exacted from others, they should recover the difference. To come within the prohibitory clauses of the Constitution, Article 12, Section 21, the discriminating charges must be for transportation of the same class of freight, and "property of the same class in the same

direction," to the same or a less distant destination. These essential tests of discrimination are the same at common law, and are recognized by all the decided cases. In the case of *John Hays & Co. vs. The Pennsylvania Railroad Company*, 12 Federal Reporter, 309, Circuit Court, N. D., Ohio, Baxter, C. J., so often quoted, and so much relied upon by complainants, the discrimination was by rebate in favor of the largest shippers of coal in the same direction and to the same market. It was based solely on the quantity, and left the smaller shippers no alternative but to pay the higher rate of charge for the same service. In *Messenger et al. vs. Pennsylvania Railroad Company*, 7 Brom. 410, it is held to be "discrimination to demand a different hire from different persons for an identical kind of service, under identical conditions;" * * * or "different rates for the carriage of goods of the same kind, between the same points." In *Brown vs. The Manchester, Sheffield, and Lincolnshire Railway Co.*, 6 English and American Railway Cases, 481, there was a higher rate without conditions, and a lower rate by special contract; conditioned upon the exemption of the defendant from liability as a common carrier; and because all shippers might "enter into similar agreements," and the "plaintiff had an alternative," the contract was sustained. Thus by the Constitution, and by all adjudicated cases, charges must be based upon the essential factors of the service—class and volume of freight, and direction and distance of transportation.

NO EVIDENCE OF DISCRIMINATION AS DEFINED BY LAW.

The criterion of discrimination being no longer debatable, the onus of bringing their case within it is upon the complainants. It is admitted that having the same option as others they have declined the condition of the lower, and paid the higher rate on their west bound freight from Milwaukee. Like Brown, in the leading English case, cited *supra*, they "had an alternative" and cannot complain of their choice. The reason therefor, assigned in their complaint, and also in their interview with Stubbs is, "that owing to the miscellaneous nature of this firm's imports they could not sign a special contract." Importations confessedly *sui generis* cannot belong to the "same class of freight" as those of the contracting merchants. This alone would be conclusive against the alleged discrimination, which can be shown only by comparison of charges for transportation of the same "class of freight." But besides this, we have looked through the one hundred and forty-five pages of printed evidence on file, and find them utterly barren of proof that any contracting or other merchant than complainants ever shipped from Milwaukee or any given point, one pound of freight of any class in any direction or for any distance. We find and hold, therefore, that complainants have failed in every essential particular to prove the discrimination alleged.

THE ALLEGED EXTORTION—TERM NOT FOUND IN THE CONSTITUTION—JUDICIALLY DEFINED TO BE MORE THAN REASONABLE HIRE.

Extortion is not defined nor is the term found in the Constitution. At common law, and by the Civil Code, a carrier of freight or passengers may charge a reasonable hire, more than which is extortion. Since the decision in *Bastard vs. Bastard*, 1 Show. 81, the Courts of England have uniformly held that, where there is no agreement as to price the carrier may have a *quantum meruit* for his hire. In *Citizens Bank vs. The Nantucket Steamboat Company*, 2 Story, 35, the Court defines reasonable hire "to mean a *quantum meruit*." This is the golden rule of measure for measure, and is the law of this country. And what the given service is reasonably worth is always, in the last resort, a question to be judicially decided, strictly between the parties. To say, in a case of alleged extortion, that the right of one is the right of all, is neither to define or demonstrate the right of any. Specific value of the service performed, and not what is charged another, is the question to be determined. In *Camblos vs. Philadelphia A. C. R. R. Co.*, 4 Brewster, 563, the Court say: "Statutory restrictions as to railroad companies' charges exclude questions of their reasonableness, except where rebates from the maximum or additions to a lower rate are unequal." In *Johnson vs. Pensacola and Perdido R. R. Co.*, 16 Fla., 623, it is said, "whether a charge made by A against B is reasonable, cannot be determined by establishing the charges against C for the same service. It is too plain for argument that the higher charge, where there is a difference, may be what is the compensatory sum; the lower charge may be too small for the service."

THE ALLEGED EXTORTION NOT PROVED.

However often asserted, extortion is not to be presumed. Has it been proved as alleged, or otherwise, in this case? It appears from the testimony of Messrs. Dempster and Bach that the higher and lower rates of transportation paid by their respective houses, are entirely optional. They testify to no rebate, unequal or otherwise, from the higher, nor to any addition to the lower rate, nor to any unfairness in the conditions of either. The higher, if subject thereto, is within the legal maximum in this State, and is not, therefore, extortion by construction of law. From end to end of the long record, no witness has testified, and there is no proof that any of the charges complained of is more than a *quantum meruit*, or has in it any element of extortion.

It is ordered, therefore, that the relief demanded by complainants in this proceeding be and the same is hereby denied, and that this decision be filed herein, without prejudice to any other remedy of said complainants, as the judgment of this Commission.

G. J. CARPENTER,
Commissioner First District.

Concurred in, for reasons given in a separate opinion, by—

WM. P. HUMPHREYS,
Commissioner Second District.

OPINION OF COMMISSIONER FOOTE.

Richards & Harrison, Plaintiffs, vs. The Central Pacific Railroad Company, Defendant.

The plaintiffs in this matter are merchants doing business in the City and County of San Francisco, and the defendant is a corporation organized under the laws of the State of California, and operating lines of railroad in said State and elsewhere.

Plaintiffs complain that they have been discriminated against injuriously, by the corporation defendant, in that they have been charged, and compelled to pay, "open tariff rates" upon large shipments made by them of bottled beer from Milwaukee to San Francisco, whilst other parties, in the same line of business, have been charged less rates, over the same line of road, on the same articles, under what is known as the "special contract" system. The view which I take of this matter involves not only the question of discrimination against the firm named, but also the question as to the jurisdiction of this Board over the transportation companies of this State, and the general policy of the "special contract" system as it affects the whole shipping community.

The undisputed facts, as they appear in evidence, are: That the Central Pacific Railroad Company, together with certain Eastern railroad corporations, in order to meet the competition of clipper ships around Cape Horn, and the route by the Isthmus of Panama, as well as to increase their own business, had a general conference upon the subject of through freight shipments to California, the result of which was that certain rates were made for special contract shippers, different from those applied to others who did business with the railroad companies, under their general or open tariff rates.

It is true that the Central Pacific Railroad Company is not named as a party to the contract in the written agreement, but in the memorandum of special rates, which contains the schedule of rates to be applied to those having special contracts, they are named, and besides, it appears from the testimony, that the Central Pacific Railroad Company is a real party to these contracts, and beneficially interested in (the freight earnings under) them. The following quotations from the printed transcript of the evidence I think establish this fact:

Q. Do you recognize this special contract as the one now in force? (Handing contract to witness.) A. Yes, sir; that is the blank now in use.

Q. Has the Central Pacific Railroad Company any interest in that contract? A. Yes, sir; to the extent that they are interested in the rates named therein.

Q. Are they interested in the proceeds of freight collected under this contract? A. A portion of the freight.

Q. As a portion? A. A portion; yes, sir. (Page 7, Transcript.)

Q. What position does the Central Pacific hold with these contracts? A. It is a party to them in the same way that those roads not mentioned are a party to them. (Page 8, Transcript.)

Q. Have the Central Pacific no further interest in these contracts than as assumed agents?

A. They have an interest in them to the extent of the earnings they receive under them. (Page 10, Transcript.)

Q. Now, are you or not interested to any extent in the amount of freight that is charged under that contract? You get a certain proportion of it, do you not? A. We get a certain proportion of it; yes, sir.

Q. And is not that an understanding which your company has with the other companies, which is not contained in the contract? A. Yes, sir.

Q. What is the proportion? What is your proportion of the contracts on through freight from here to New York under the special contract system?

By General Barnes: Q. Take the rate of \$2 25 on one hundred pounds of freight from Milwaukee or Chicago here. State how that is divided among the roads, and then you will get each one. A. Out of that rate the line between Milwaukee and Council Bluffs receives fifteen per cent. The bridge at Omaha receives five cents per one hundred pounds.

Q. Arbitrarily? A. Arbitrarily. Then the remainder is divided between the Union Pacific and the Central Pacific.

Q. According to what? A. On the basis of fifty-four per cent to the Union Pacific and forty-six per cent to the Central Pacific.

Mr. Foote: That is the same as passenger rates, is it not? A. That is the same as passenger rates; yes, sir.

Q. Then you have an understanding with them to that extent; you have an interest in the contract to the extent of forty-six per cent on the amount of freight between here and Omaha after crossing the bridge? A. Yes, sir. (Pages 13 and 14, Transcript.)

Q. Right there, do you or do you not have any understanding with the parties who are actually named in this contract, as to what proportion of the earnings your road shall receive, or is that contract made entirely by others? Do you take just what they agree to give you, or do you understand beforehand what you are to get? A. The division of our rates as between ourselves and the Union Pacific is all agreed beforehand; it is also agreed with the Iowa lines, as they are called; that is, the lines between the Missouri River and Chicago.

Q. Then, while you are not nominally parties to this contract, you have an interest in fixing the rates so far as your own road is concerned, have you not? A. We have interest in the earnings to the extent of the earnings. (Page 15, Transcript.)

Q. You have forty-six and they have fifty-four, as I understand you, of all freight money that is earned between the Missouri River and San Francisco? A. Yes, sir.

Q. That was understood before these contracts were entered into between you and the Union Pacific Railroad? A. Yes, sir.

Q. And to that extent, although not named as a party in the contract, you have an interest in making the contracts? A. Yes, sir.

Mr. Harrison: Mr. Gray, have you not a voice in making these rates of freight—what the rate shall be? A. These rates are established after consultation between all the roads forming the overland line.

Q. The Central Pacific included? A. Yes, sir.

Q. Therefore they have had a voice in making the rates? A. Yes, sir.

Q. Have they had a voice in making the terms and conditions of these contracts? A. They have agreed to the terms and conditions always.

Q. Have they had a voice in making them? A. To a certain extent, yes.

Q. To what extent? A. Well, in the handling of the business, the lines having the greatest interest dictate.

Q. So you took what you could get? A. We submitted to the will of the majority.

Q. Did you ever protest against taking what you could get under those circumstances? A. I don't understand that question.

Q. Did you ever protest against any pro rata granted you by the line claiming the majority of the freight? A. The pro rata of what?

Q. Freight money; the Union Pacific is the one that claims the greater amount of freight? A. Those divisions were agreed on beforehand. (Page 16, Transcript.)

Q. Has there ever been an instance where that contract was signed and sent by the clerk in the office, who you say arranges that, which the other parties refused to sign. Isn't the simple signature of the merchant all that is required. Do not the other parties sign as a matter of course, when you send them on? A. There have been exceptions to the rule.

Q. For what reason, if you know? A. Well, the agent of the Union Pacific road would find out that the party was not signing in good faith, or was not competent to sign; that is, while agreeing to ship all his goods overland, either could not, or would not comply with the conditions.

Q. Do you know how they obtained that information; through whom? A. I do not. (Page 18, Transcript.)

Mr. Foote: I would like to ask a question or two. I understand you to say that your percentage of profit is eighty-four cents on the hundred pounds?

Gen. Barnes: Not the profit.

Mr. Foote: You charge that on the through rate? A. Yes, it is eighty-four cents.

Q. That would be \$168 a car from here to Ogden? A. Yes.

Q. The contract rate would be \$150; \$18 less? A. The contract rate would be \$400 from Milwaukee here.

Q. Your proportion of it? A. Just about \$150.

Q. I understand you to say you get eighty-four cents for one hundred pounds, and you call ten tons a carload? A. In other words, our proportion of the contract rate is \$18 a car lower than our proportion of the open rate.

Q. That is the way I figure it. I figure it on the basis of \$8 40 a ton from Ogden here? A. Yes, \$8 40 per thousand, or \$16 80.

Q. Then you say about nine cents is the difference between the contract rates and the others? A. Yes.

Q. That will be just \$18? A. Just about.

Q. So that it would be \$150? A. Yes.

Q. As a matter of fact there is only \$18 difference in profit to you on a carload?

General Barnes: It is not profit. It is what the freight charge is. Freight charge is one thing, profit another.

Mr. Foote: Exactly. It has been a little difficult to get at profit in the last few days. (Page 56, Transcript.)

The fact then that the Central Pacific Railroad Company is a real party to these contracts is established by the evidence, and conceded by counsel for the defendant, for in his very able presentation of the case for the Transportation Company, on page 46 of his brief this language is used:

"It is in evidence, and admitted for that matter, that the Central Pacific Railroad Company, though not a nominal party to these contracts, has acquiesced in them, approved of them, had a voice in the original determination of the rates, has made suggestions as to their modification, and is interested in the results of the contracts to the extent of its proportion of the moneys agreed to be paid under them."

Upon the jurisdictional question, the learned counsel upon the same page of his brief, says:

"It may well enough be conceded that until the State of Nevada and the Territory of Utah shall adopt some law for the control of freights and fares, and for general regulation upon this subject, of all railroads within their respective borders, the judgment or order of this Board of Railroad Commissioners may control the action of this California corporation in respect to freights and fares, with the details akin thereto, on its line without as well as within this State."

After making this concession, counsel strenuously argues against the jurisdiction of this Board to pass upon the questions involved in this case, and especially insists that it has no jurisdiction over foreign corporations who are parties to those special contracts. So far as foreign corporations are concerned, it is an undoubted fact that the State of California cannot confer upon any tribunal extra territorial jurisdiction over foreign corporations, but so far as the Central Pacific Railroad is concerned I do not concur in the view he so ably presents.

The Constitution of this State, framed partly with a view to create a tribunal before which the transportation question could be fairly heard and determined, established a Board of Railroad Commissioners, and granted to it certain powers, and prescribed certain duties. Section 21, of Article 12, of the Constitution of the State of California, reads as follows: "Section 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

It is urged with great force that the charging of one person a certain rate, under a special contract, which is less than that charged to another for the same service, under open tariff rates, is not a discrimination within the meaning of the Constitution and laws, for the reason that all persons have the privilege of making special contracts if they so desire.

To my mind the evidence offered does not establish the fact that special contract rates are open to all alike, for Mr. Richard Gray, the General Freight Agent of the Central Pacific Road, in his evidence before this Board, to be found on page eighteen of the Transcript, uses this language:

"Q. Has there ever been an instance, where that contract was signed and sent on by the clerk in the office, who you say arranges that, where the other parties refused to sign? Isn't the simple signature of the merchant all that is required? A. There have been exceptions to the rule.

"Q. For what reason, if you know? A. Well, the agent of the Union Pacific Road would find out that the party either was not signing in good faith, or was not competent to sign; that is, while agreeing to ship all his goods overland, either could not or would not comply with the conditions.

"Q. Do you know how they obtained that information—through whom? A. I do not."

This testimony leads me to the conclusion that something more upon the part of the shipper than mere willingness to sign the contract is necessary, before the right to the contract attaches, and that is a determination upon the part of the railroad company upon the qualification of the party who seeks the privilege. My view, therefore, is that the railroad company can accept or reject a proposition for a special contract at its own discretion, and that, therefore, the special contract system is not equally open to all. The logical deduction from which is that the whole contract system is a discrimination, not only against these plaintiffs, but also against every other overland shipper, who does business under open tariff rates. If these views be correct, then there is no discretion vested in this Board as to what course should be pursued, for the constitutional mandate is plain: "No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company."

It is claimed by the railroad company that the general effect of the special contract system has been to greatly decrease the freight charges upon all classes of overland freight. However this may be, it is not for this Board to inquire, for if discrimination has been and is being practiced, it is our duty to prevent it. Undoubtedly those who ship under the lower rates are benefited to the extent of the reduction which is made, but how does it operate on those who for any reason are compelled to pay the higher rates? Doubtless to their disadvantage. That the SPECIAL CONTRACT SYSTEM was not devised for the benefit of the public, Mr. Stubbs' testimony amply proves. (Page 111, Transcript.) There are certain clauses in these SPECIAL CONTRACTS which, to say the least, are peculiar. In the first place, a shipper who signs one of these must agree to ship all his freight by rail. A failure to do so forfeits the privileges of the contract and obliges him to pay open tariff rates.

Secondly—No one who has a contract can buy from or sell to any one who ships in any other way than by rail under the same penalties. Thirdly—The railroad company reserves the right to examine the books of shippers in order to determine whether the terms of the contract are being faithfully complied with. A contract containing such provisions as these, in my judgment, offers a premium for fraud and perjury; it gives a dishonest shipper an undue advantage over one who will carry out the terms of the contract; its enforcement is against public policy, and in restraint of trade. It establishes a system of espionage over the mercantile community which no common carrier ought to be allowed to exercise under any circumstances.

Holding these views, it is scarcely necessary to add that in my judgment this Board ought to exercise all the powers conferred upon it to break up the system, to the end that every shipper in the State should have the privilege of conducting his business upon the basis of legitimate competition.

I have examined with great care all the authorities cited by counsel for defendant, besides other authorities to which I have had access, and they only confirm the views above expressed. There is no case reported, the facts of which are precisely the same as the one before this Board, but there are a number which throw light upon the subject.

The case of *Hay vs. Pennsylvania Railroad Company*, reported in 14 Federal Reporter, 309, which is the decision of Judge Baxter, of the United States Circuit Court, contains this language:

"Hence everybody constituting a part of the public for whose benefit it was authorized, is

entitled to an equal and impartial participation in the use of the facilities it is capable of affording. Its ownership by the corporation is in trust, as it were, for the public as well as for its shareholders, but its first and primary obligation is to the public. We need not recount all these obligations. It is enough for present purpose to say that the defendant has no right to make unreasonable and unjust discriminations. No rate can be formulated with sufficient flexibility to apply to every case that may arise. It may, however, be said that it is only when the discrimination inures to the undue advantage of one man in consequence of some injustice inflicted on another, that the law intervenes for the protection of the latter. * * *

It is the custom, we believe, for railroad companies to carry fertilizers and machinery for mining and manufacturing purposes to be employed along the lines of their respective roads to develop the country and stimulate production, as a means of insuring a permanent increase of their business at lower rates than are charged on other classes of freight, because such discrimination, while it tends to advance the interest of all, works injustice to no one. * * *

Ought a discrimination resting exclusively on such a basis to be sustained? If so, then the business of the country is in some degree subject to the will of railroad officials; for, if one man engaged in mining coal, and dependent on some railroad for transportation to the same market, can obtain transportation thereof at from twenty-five to thirty cents per ton less than another competing with him in business, solely on the ground that he is able to furnish and does furnish the larger quantity for shipment, the small operator will sooner or later be forced to abandon the unequal contest, and surrender to his more opulent rival. If the principle is sound in its application to rival parties engaged in mining coal, it is equally applicable to merchants, manufacturers, millers, dealers in lumber and grain, and to everybody else interested in any business requiring any considerable amount of transportation by rail, and it follows that the success of all such enterprises would depend as much on the favor of railroad officials as upon the energies and capacities of the parties prosecuting the same. It is not difficult with such a ruling to forecast the consequences. The men who control railroads would be quick to appreciate the power with which such a holding would invest them, and it may be, not slow to make the most of their opportunities, and perhaps tempted to favor their friends to the detriment of their personal or political opponents." The learned Judge, after commenting upon the facts, continues: "It is a discrimination in favor of capital, and is violative of a sound public policy; violative of that equality of right guaranteed to every citizen, and a wrong to the disfavored party, for which the Courts are competent to give redress."

The case of *Messenger vs. Pennsylvania Railroad Company*, reported 36 New Jersey, 407, holds these views:

"An agreement by a railroad company to carry goods for certain persons at a cheaper rate than they will carry under the same conditions for others, is void as creating an illegal preference. There is no doubt but an agreement of this kind is calculated to give an important advantage to one dealer over other dealers, and it is equally clear that, if the power to make the present engagement exists, many branches of business are at the mercy of these companies. A merchant who can transport his wares to market at a less cost than his rivals, will soon acquire, by underselling them, a practical monopoly of the business, and it is obvious that this result can be brought about if the rule is, as plaintiffs contend that it is, that these bargains giving preferences can be made. A railroad is not, in general, subject to much competition in the business between its termini; the difficulty in getting a charter, and the immense expense in building and equipping its road, leaves it in the main without a rival in the field of its operation, and the consequence is that the trader who can transmit his merchandise over it on terms more favorable than others can obtain, is in a fair way of ruling the market. The tendency of such compacts is adverse to the public welfare, which is materially dependent on commercial competition and the absence of monopolies. I am unable to see how it can be admissible for a common carrier to demand a different hire from various persons for an identical kind of service, under identical conditions. Such partiality is legitimate in private business, but how can it square with the obligations of public employment. A person having a public duty to discharge is undoubtedly bound to exercise such office for the equal benefit of all, and, therefore, to permit him to charge various prices, according to the person with whom he deals, for the same services, is to forget that he owes a duty to the community. If he exacts different rates for the carriage of goods of the same kind between the same points, he violates as plainly, though it may not be in the same degree, the principle of public policy, which, in his own despite, converts his business into a public employment."

A very recent case is that of *Rothschild vs. The Wabash, St. Louis and Pacific Railroad Company*, tried in one of the Nisi Prius Courts of Missouri, at St. Louis, and thus far only reported in the newspapers.

The case grew out of an alleged discrimination practiced against the plaintiff in the shipment of cattle from East St. Louis to Jersey City, under what is known, in railroad parlance, as the "Evener's system," and the following is a statement of the facts, and a portion of the opinion of the Court:

"In 1875 and 1877 plaintiff shipped various lots of cattle on the Toledo, Wabash and Western Railway Company, and Wabash, St. Louis and Pacific Railway Company, and complains that defendant charged him \$130 per car, whilst it carried cattle from and to the same points for Nelson Morris, of Chicago, and J. C. Eastman and S. W. Allentown, of New York City, for a less price, viz.: sixty dollars per car, thus enabling them to undersell him in the market at Jersey City, to his damage in the sum of \$25,000, for which he prays judgment." The following is a portion of Judge Adam's opinion:

"*Leopold Rothschild vs. The Wabash, St. Louis and Pacific Railway Company.*

"A railroad cannot be allowed to discriminate between patrons so as to charge one person a greater sum of money than it charges another for the same service, and when such discriminatory charges have been made and paid, the shipper paying the greater charge may recover from the railroad the surplus paid by him over and above what the railroad has charged at the same time and for the same service to any other shipper. The plaintiff did not prove that the charge made to him is unreasonably large, further than to show that it is larger than is charged to another for the same service. When this fact is shown, he makes a case of unlawful discrimination against himself, and may recover against the railroad the amount of the overcharge.

"The presumption is indulged that a railroad charges no shipper less than a reasonable price for services rendered. (*Hays vs. Penn. R. R.*, 22 Am. L. Reg. 39. *R. R. Co. vs. Steiner*, 9 Law and Eq. R. 39.)"

This case, in its facts, is more like those arising out of the "special contract" system than any other which has come under my observation. The judgment in this case was against the plaintiff, but solely, as the opinion shows, on account of the failures of proofs. In the present case the facts established are precisely those wherein the proof failed in the Missouri case. It is admitted here that the rates by carload lots, on the article of beer, are fifty dollars per carload higher under open rates than those which obtain under the special contract system, and that out of this sum the portion of freight money received by the Central Pacific Railroad is eighteen dollars per car. Counsel for defendant contends that this Board has no jurisdiction to pass upon this matter of special contracts, even so far as the Central Pacific Railroad is concerned. On page thirty-nine of his brief, he says: "These special contracts may be ever so void under the Constitution of this State, so far as the railroads of this State are concerned, because they are discriminative in character; but if the railroad company itself were to join hands to prevent their execution, both together, as each alone, would be powerless to prevent a single one of them to be made."

Again, on page forty-one, he says: "In other words, you have no more power over this subject-matter, or over the parties to the contract, than I have." Again, on page forty-six, he says: "I say, then, that this subject is not within the jurisdiction of this tribunal, and that its decrees, whatever they may be in respect of it, like the decrees of any other Court in respect to subject-matter or parties not within their jurisdiction, will be absolutely void."

These views are diametrically opposed to those which I entertain. I believe that this Board has jurisdiction of both parties to this proceeding; that the system is clearly a discrimination under our Constitution, and that this Board has ample power to enforce any decree it may make in the premises, whether pertaining to this particular case or the general subject of special contracts, under Section 12 of the Act of 1880, which reads as follows:

"SEC. 12. When jurisdiction is by the Constitution conferred on the Board of Railroad Commissioners, all the means necessary to carry it into effect are also conferred on said Board, and when in the exercise of jurisdiction within the purview of the authority conferred on said Board by the Constitution, the course of proceeding be not specially pointed out, any suitable process or mode of proceeding may be adopted by the Board which may appear most conformable to the spirit of the Constitution."

Entertaining these views, I think a decree should be made declaring that Richards & Harrison are entitled to recover from the Central Pacific Railroad Company all freight moneys which they have paid to defendant in excess of the special contract rates, and that such order or decree could be enforced under Section 22 of Article 12 of the Constitution, which gives to the Commissioners power to enforce their decisions and correct abuses through the medium of the Courts. Under the same statutory and constitutional provisions it seems that we have the power, and that it is our duty, to make and serve upon the Central Pacific Railroad Company a general order requiring that corporation to refrain from entering into further contracts and to carry for all shippers alike, for the lowest rates which are now charged to the most favored customers. This order could certainly be enforced under that further provision of Section 22 of Article 12 of the Constitution which provides a fine of \$2,000 for failure to conform to such rates as may be established by this Commission.

For the reasons herein stated, I dissent from the views expressed by my associates.

W. W. FOOTE,
Commissioner Third District.

At the same meeting (May twenty-ninth), Commissioner Foote introduced another resolution—his second relative to fares, and first relative to freights—as follows:

WHEREAS, The present Board of Railroad Commissioners have now been in office for nearly five months, and during said time have made no regulation reducing either freights or fares, or for the prevention of extortions or discriminations upon the part of any of the transportation companies of this State; and whereas, on the fifth day of February, A. D. 1883, a substitute for resolutions numbers two and three was passed by a majority of the Board, the purport of which was that investigation should precede action by this Board; and whereas, this Board has now investigated the subject of fares and freights upon certain lines of railroad in this State, the result of which investigation has been to demonstrate that fares and freights upon said roads are too high, and that discriminations and extortions have been made, and are

now being practiced, which are prohibited by the Constitution, and should no longer be tolerated; therefore, be it

Resolved, First—That the judgment of this Board is: That upon the Central and Southern Pacific Railroads, and their leased lines, the maximum rate for passenger fares should not in any case exceed the sum of three cents per mile, and when said rates are now equal to or less than said sum per mile they should remain as they are now.

Second—That the present charges upon said lines of railroad, above mentioned, should be reduced at least twenty per cent from the freight rates in force on said roads on the first day of January, A. D. 1883.

Third—That all discriminations which are now practiced ought at once to be forbidden.

Fourth—That this Board proceed immediately to revise the tariffs of freights and fares upon the said lines of road, and serve copies of said revised schedules upon the corporations affected thereby, so that all of said contemplated reductions may go into operation on or before the first day of July, A. D. 1883.

On motion of Commissioner Carpenter, it was laid on the table, he and Commissioner Humphreys voting for, and Commissioner Foote against the motion. While the resolution is only an informal suggestion, without any official bearing, force, or purpose, it was made to the Commission itself at one of its public meetings, and is, therefore, inserted in this report. It is presented precisely as it is, and for all it is worth to the business or lawful methods of the office.

The whereases with which it is prefaced must be presumed to import the reasons for its introduction. The first, in a tone of self-reproach, confesses defaults which are not to be canceled by resolutions. The second informs the Commission of what the minutes are the best and most convenient evidence, and is therefore redundant and useless. The third recites that the Commission has "investigated," so as to "demonstrate" that fares and freights are "too high," but adds nothing to what it knows, or does not know. It says, also, that "discriminations and extortions" are now being practiced, which "are prohibited by the Constitution," and "should not be tolerated"—good reasons, in the opinion of the Commission, for instituting comparative statements, based upon existing classifications and charges, to determine definitely and specifically what rates are unequal, or *how much* "too high," and for adjustments and reductions according to law, but not for the resolution.

Following the foregoing recitals, the first subdivision of the resolution again suggests that over a system of long and short roads, presenting every vicissitude and variation of service known to railroading, there should be an even, unvarying, and uniform passenger rate of three cents per mile; provided, only, that rates now ranging below it, shall remain as they are. It thus refutes itself by establishing and continuing maximums and minimums, necessarily based upon differing conditions of the service.

The second subdivision suggests a like arbitrary uniform reduction of twenty per cent on freight rates, which would leave them relatively the same, and perpetuate the inequalities "prohibited by the Constitution." And this result is not prevented by the third subdivision, which disposes of discriminations by merely saying that they "ought at once to be forbidden." To *forbid* is easy enough, but to *prevent* necessitates long and tedious comparisons and equations of the discriminative rates. The fourth and last subdivision confesses its own insufficiency, by suggesting "*revised schedules*," instead of *another resolution*. But this intimation is manifestly superfluous, and comes too late to be of any service to the Commission. From the beginning it has repudiated resolutions like the one under consideration, as mere indulgences of evils which "ought to be no longer tolerated." And,

this constitutional infirmity of Commissioner Foote's first resolution was made apparent and conclusive by the substitute therefor, introduced by Commissioner Carpenter, and adopted by the Commission February 5, 1883, and which will be found on pages fourteen and fifteen of this report.

The first schedule was prepared under the direction of Commissioner Humphreys, and it was introduced by him for consideration on the first day of June, 1883. In tabulated form it established maximum rates of passenger fares within the State, on the roads owned and operated by the Central Pacific Railroad Company, at five and seven cents per mile. Thereafter, on the eleventh day of June, Commissioner Foote introduced a defective substitute for said schedule, showing the distance between stations and the price of a ticket from any given station to the next, but leaving it, if to any more distant point, to be ascertained by computation upon the uniform basis of three cents per mile. It was *not*, therefore, in the established and convenient form which shows not only the rate multiplied by the distance from one station to the next and from that to the next, to the end of the line, but from each to all and from all to each, over the entire road. But for the purpose of a vote upon the unreasonable uniform maximum rate of three cents per mile, over all roads, without regard to cost or conditions of service, it was treated as a schedule.

No definite action was taken on the two propositions thus before the Commission until the twenty-sixth of June, when both were withdrawn. Thereupon, by mutual understanding, Commissioner Humphreys introduced and moved the adoption of a new and more perfect schedule, together with an order for its enforcement, establishing maximums of passenger fares on said roads at four and six cents per mile. As a substitute therefor, Commissioner Foote moved the adoption of the schedule he had withdrawn. He voted for, and Commissioners Humphreys and Carpenter against, the motion. He then moved to amend the pending schedule by substituting therein three and four for the four and six-cent maximums it established. He voted for, and Humphreys and Carpenter against, the motion. Thereupon the motion to adopt said schedule and order reducing all higher rates to four and six cents per mile, and providing that rates ranging below them shall remain as they now are, was put and carried. Commissioners Humphreys and Carpenter voted for, and Commissioner Foote against, the motion.

In pursuance of law and the order of the Commission, the schedule thus adopted was printed, and on the second day of August was duly served on the companies to be affected thereby. Adopting and continuing all existing rates below four cents per mile, it establishes the lower of the reduced maximums over twelve hundred and ninety-five, and the higher over seven hundred and twenty-four, in all two thousand and nineteen miles of railroad, and their valley, mountain, and desert divisions, as follows:

	No. Miles.	Cents per Mile.
From San Francisco to Tracy	72	4
From San Francisco to Sacramento	151	4
From Niles to San José	18	4
From Lathrop to Sumner	220	4
From Sumner to San Fernando	147	6
From San Fernando to Los Angeles	21	4
From Los Angeles to Colton	58	4
From Colton to Yuma	191	6
From Mojave to Goffs	240	6
From Los Angeles to Santa Monica	18	4
From Los Angeles to Santa Ana	34	4
From Los Angeles to San Pedro	25	4
From Port Costa to Sacramento	58	4
From Stockton to Milton	30	4
From Peters to Oakdale	18	4
From Galt to Ione	27	4
From Davis to Knights Landing	19	4
From Woodland to Tehama	102	4
From Sacramento to Auburn	36	4
From Auburn to State Line	103	6
From Roseville to Redding	152	4
From Sacramento to Shingle	48	6
From South Vallejo to Calistoga	42	4
From Napa Junction to Suisun	13	4
From San Francisco to Monterey	125	4
From Carnadero to Tres Pinos	18	4
From Castroville to Soledad	33	4

The reduced maximums were put in operation on the nineteenth day of August, and superseded rates ranging up to ten cents per mile. The comparative mileage of different rates on all the roads affected thereby is as follows: On seven hundred and twenty-four miles, six cents; on eight hundred and eighty, four cents; on two hundred and sixty-four, less than four and more than three cents; and on one hundred and fifty-one, less than three cents per mile. The schedule and order of the Commission adopt the lowest existing rates on four hundred and fifteen miles of road, and establish reduced rates, making an average reduction of more than thirty per centum on the rates superseded, over and upon sixteen hundred and four miles of road.

The companies subject to the order of the Commission submitted to its enforcement under the formal protest which accompanies this report as Appendix B. It was made by A. N. Towne, their General Manager, and excepts:

First—To the jurisdiction of the Commission to "regulate fares and freights upon the Central and Southern Pacific Railroads." The theory of the exception is, that by the several Acts of Congress to aid the construction of said roads, all power to regulate their charges for transportation, inter-State or local, not conferred upon their Directors, was reserved, with the assent of the State, by the Federal Government. It is also urged that the exercise of the power thus conferred over the Central Pacific Railroad is contingent upon an income of ten per cent upon the cost of its construction, exclusive of payments upon loans due to the Government. It is further maintained on behalf of the protesting company, that it is protected by said Acts from any law of any State or Territory by which it might be impeded, delayed, or prevented from performing its obligations to the Federal Government.

Having exercised the disputed power, the Commission finds in the Constitution of the State a defense which it need not defend. And, as any response to a denial of its authority may be superfluous, it will only suggest that Congress could reserve or confer only such powers as it had, and that they were and are limited to the regulation of inter-State commerce. To this the stipulated service to be performed by the protesting companies clearly belongs. To their acceptance of the loans and franchises, necessary to the performance of that service, and to their resulting obligations to the Federal Government, the State has assented, and can do nothing to defeat them. But it could not apprentice the complaining corporations to another State, nor to the United States, nor subordinate its local jurisdiction over them to any power or government external to itself.

The Acts of Congress relied upon by the protestant, if construed with reference to the visible boundaries of Federal power, are plainly enough within them, and the ratifying act of this State, so far from being a surrender, was an exercise of sovereignty in aid of overland roads for both local and national purposes. In short, the relations of the State and Federal Governments to an overland road are much like those of the connecting but separate steamship companies to the man who sold their tickets. In the case of *Biggs vs. Vanderbilt and Drew* (19 Barb. 222), they are held to have had the "same agent, but he acted in his vicarious capacity for each."

Second—The protesting companies deny that reductions made by the Commission from preëxisting standards, established by themselves, are just and reasonable. The theory of this objection has been fully considered and answered, and those who would draw conclusions from known results, must wait for them. In the meantime there are better reasons for other reductions than for any reaction to former rates.

Third—The protestants "insist" that the judgment and determination of the Commission in the premises must have been influenced, if not induced, by hostile surroundings. To all this and more, the Commission and each member thereof, enters an unqualified disclaimer and denial. And with the emphatic assurance that no official act or opinion of either has been or ever will be at all influenced by any threat or fear of railroad injunction, partisan mandamus, or personal injury, the subject is dismissed.

Fourth—The last and most serious objection to the action of the Commission is, that it will discourage and prevent the extension and construction of railroads, and will thus arrest the progress and prosperity of the State. It is suggestive of more than is said. It very clearly implies that the public use of railroads, which is the subject of regulation, is the sole inducement to their construction and operation. Precisely upon this implication rests the conclusion that the use of existing roads should be regulated upon such principles as not to discourage or defeat the construction of extensions and branch lines. Admitting a conclusion which none will controvert, the Commission denies the alleged wrong to existing and projected roads. It has in all cases considered the essential conditions upon which they ever have been or can be built and operated. It has not found in unity of management any legal or moral reason for ignoring these conditions, nor for substituting arbitrary uniform rates for reasonable compensation. It has not given to one railroad or company what belongs to another. It has not taken from the centers of population

and production their rightful advantages, nor from less favored districts such as they have, either in possession or expectancy. It has not, in plain violation of the Constitution and common justice, enforced competitive rates over mountains and deserts, where it could neither build another road, nor dig a river, nor roll an ocean. It has not attempted to do impossible things, nor to reverse or revise the Constitution, the irreversible laws of trade, or the equally enduring principles of transportation.

This Commission can have no policy other than that of the law, which is presumed to be the welfare of the people. That their interests may be subserved by the railway system of the State, it must be studied and governed upon comprehensive business principles, with reference not alone to what they have, but also to what they want and must have. For this purpose even the most romantic and mysterious passages in the history of pioneer roads are of far less importance than their present or prospective extension, management, and use. They came in advance of ordinary business inducements. Their construction was accelerated by Government loans which are subsisting liens upon them. But for operation and maintenance they are left like other roads, dependent upon their public use at reasonable compensation. And while they have stimulated the industries and business activities of contiguous territory, and have drawn to it two thirds of the population of the State, they have a local traffic equal to less than one third of their possible equipment and working capacity. And as the cost of service, other conditions being equal, is in inverse ratio to volume of traffic, it follows that the people living along and patronizing existing roads, and especially those having none to patronize, can have nothing to gain, for an indefinite time to come, by parallel or competitive lines of road. It is as plainly in the interest of all beneficially concerned to enlarge the tributary territory and increase the local patronage of trunk lines, and to round out and perfect the railroad system of the State, by branches and feeders running east to isolated districts along the western slopes of the Sierras and west through the valleys and passes of the Coast Range, beyond the reach of competition. And the differing conditions and rates of charge upon which such subsidiary roads can alone be constructed and operated are as certain and inevitable as manifest destiny, which is simply what must and will be, near-sighted and superficial statesmanship to the contrary notwithstanding.

On the twenty-fifth day of June an order to transportation companies to appear within three days, and show cause, if any they had, why certain reductions of freight rates should not be made, was introduced by Commissioner Carpenter, and unanimously adopted, as follows:

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA.

It is ordered that the Central Pacific and the Southern Pacific Railroad Companies, for themselves and leased lines, and also all other railroad companies having offices in the City of San Francisco, be, and they are hereby, required to appear before this Board, at its office in said city, on Wednesday, the twenty-seventh day of June, 1883, at ten o'clock of said day, then and there to show cause, if any they have, why reductions on rates of freights to tide-water, and thence to all interior points in this State, should not be made, as follows:

First—An average reduction of from ten to twenty per cent for moving grain to tide-water from the following interior points, namely: Willows to Roseville Junction, Yolo to Sacramento, Knights to Sumner, Curtis to Huron, Soledad to Arena, Eden Vale and others.

Second—Such a reduction, not less than thirty-three and one third per cent on present rates, for carload lots of grain for seeding and feeding purposes, from points on tide-water to all interior points in the State, as shall make the rates on grain the same from and to the interior.

Third—The average reduction of present rates, equal to twenty per cent, on flour and mill stuffs, from mills at tide-water, and other manufacturing points, to all interior points in the State.

Fourth—An average reduction of present rates, equal to thirty-five per cent, on all kinds of household goods and furniture, and on all emigrants' movables, in carload lots, in all directions, to all points in the State.

Fifth—An average reduction of twenty per cent on present rates for fence-wire in carload lots to all points in the State.

Sixth—An average reduction of thirty-five per cent on rates for blacksmiths' coal, dairy and table salt, and other articles of the same class, in carload lots, to all points in the State.

Seventh—An average reduction of twenty per cent on the carriage of grain sacks, agricultural implements, wagons, and vehicles of all kinds, to all points in the State.

Eighth—Why reductions on present rates for the transportation of wool, and also live stock, especially in less than carload lots, should not be made.

It is further ordered that the time for showing such cause as aforesaid shall be limited to said day.

In response to the foregoing order, on the twenty-seventh day of June, the Central Pacific Railroad Company appeared for itself and leased lines, and was heard in opposition to the proposed reductions of freight rates; and thereafter, on the sixth day of July, protested against them in the written communication which accompanies this report, Appendix C.

On the first day of August, Commissioner Humphreys introduced an order, which was unanimously adopted, reducing passenger fares on the Southern Pacific Railroad, Northern Division, as follows:

It is hereby ordered by the Board of Railroad Commissioners of the State of California, that the rates of transportation of passengers over the Northern Division of the Southern Pacific Railroad, between Fourth and Townsend Streets, in the City and County of San Francisco, and the station on the aforesaid railroad known as Ocean View, shall not exceed fifteen cents per passenger, and no higher charge shall be made to or from any station in said city and county.

The order was duly served upon the proper company, and has since been, and now is, in force and operation on said road.

On the fifth day of September, 1883, Commissioner Carpenter introduced a standing order to expedite the preparation and service of schedules, and which is self-explanatory. On the fifteenth day of the same month it was adopted unanimously, and is as follows:

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA.

WHEREAS, By Section 11, Chapter 59, of the Statutes of 1880, entitled "An Act to organize and define the powers of the Board of Railroad Commissioners," it is provided that: "Whenever said Board, in the discharge of its duties, shall establish or adopt rates of charges for transportation of passengers or freight, pursuant to the provisions of the Constitution, said Board shall serve a *printed schedule* of such rates and of any changes that may be made in such rates, upon the person, copartnership, company, or corporation affected thereby; and upon such service it shall be the duty of such person, copartnership, company, or corporation to immediately cause *copies of the same* to be posted in all of its offices, station-houses, warehouses, and landing offices affected by such rates, in such manner as to be accessible to public inspection during usual business hours. And whereas, it is further provided in said section and Act that the rates of charges established or adopted by said Board pursuant to the Constitution and this Act, shall go into force and effect the twentieth day after service of said schedule of rates or changes of rates upon the person, copartnership, company, or corporation affected thereby, as herein provided." And whereas, unless waived by the party to be affected thereby, as aforesaid, the mode and time prescribed exclude all others. And whereas, it is optional with such party to waive said time and also service of printed copy of said schedule; and whereas, it is competent and proper for this Commission, when it shall "*establish or adopt* rates of charges," as aforesaid, to consult the convenience and preference of such party as to the form and clerical preparation of the schedule it is required to copy and post for inspection and use as aforesaid:

Now, therefore, it is hereby ordered, That in pursuance of said section of said Act, this Commission can and will establish or adopt rates of charges for the transportation of passengers and freight only by schedule; and that in the preparation thereof in the usual form for convenient use as aforesaid, the Secretary of this Commission is hereby authorized and directed to avail himself of such form or draft of such schedule as may be most conveniently copied and used by the party to be affected thereby.

And it is further ordered, That upon the completion of any schedule of rates and charges, so drafted and prepared as aforesaid, the same shall be submitted to the Commission, and it shall be "*established and adopted*," as aforesaid. A certified copy of the order adopting the same

shall be served by said Secretary upon the party to be affected thereby; and in case such party shall prefer for its own convenience, and to simplify the duties of all concerned, to make its own copy of all such schedules, and shall consent to put the same in operation within twenty days from and after the service of said order, and in accordance therewith, it may do so without further preliminary process or proceeding to enforce the same; *provided*, that said party, or its general manager, shall, within three days from and after the service of said order, acknowledge the service of said schedule by printed copy, expressly waiving all other service or notice thereof, in writing, addressed to said Commission, and to be filed and remain of record in its office.

And it is further ordered, That if such acknowledgment and waiver, as aforesaid, shall not be filed in said office within three days from and after the service of such order as aforesaid, then, and in that case, said Secretary shall immediately proceed to print such schedule and order, and to serve printed copies thereof on the parties to be affected thereby, and shall keep a record of his action in the minutes of said Commission.

LEGISLATION SUGGESTED.

This standing order relates to the office work of the Commission, and to its most important duties. It conforms to the simple and definite methods of the Constitution, which terminate in orders and decisions. But there is, also, the statute of 1880, Chapter 59, Section 11, which imposes upon the Commission the endless mechanical labor of preparing "printed schedules" of the rates of fares and freights it establishes or adopts and is an unreasonable and ungrammatical supplement to the Constitution. It makes the Commission, in the matter referred to, a sort of one clerk inconvenience to the companies subject to its jurisdiction, without their force or facilities for doing the work required, and to the manifest detriment of all concerned. And, while acknowledging accommodating waivers of the cumbersome service required of the Commission, they are regarded as pertinent admissions of what the law should be. It is, therefore respectfully urged that Section 11, *supra*, be so amended as to require of the Commission only those constitutional determinations, known as orders, or decisions, in compliance with which the company or companies to be affected thereby, shall be required, within a reasonable time, to tabulate, print, and post the necessary schedules.

On the twenty-first day of August, questions involving the comparative cost per mile of running trains of three and six passenger cars, and a train of fourteen freight cars, were prepared by Commissioner Foote, and submitted by the Commission to A. N. Towne, General Manager of the Central Pacific Railroad and leased lines. On the eighteenth day of September, answers were received and filed, showing expenses of movement, maintenance of track, stations, miscellaneous items, and aggregate traffic, on the roads and divisions of roads designated by the questions submitted. But, upon reviewing them, we are satisfied that neither the questions nor the answers are such as to reach the desired result, namely: the cost per mile of transporting one passenger, or one ton of freight. And after answering as to both branches of the service, Mr. Towne says: "With regard to the cost pertaining to freight and passengers, I am unable from any accounts we keep, to give you the desired information. According to the best authority it is necessary to know fifty-eight different items, all of which vary materially on different roads and branches thereof, and enter into different combinations with each other. These items of cost of movement are affected by climatic changes, the weight of trains, the cost of fuel, labor, and many other things too numerous to mention." It is, nevertheless, believed that the unit of cost, under different conditions and in each department of service, is of the first

importance, and that it should be shown by the annual returns made to this office by the several railroad companies in this State.

THE PACIFIC COAST STEAMSHIP COMPANY, PLAINTIFF, vs. THE BOARD
OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA,
DEFENDANT.

In the Circuit Court of the United States, in and for the District of California.

This is a suit in equity to restrain the Commission from establishing rates of charge for the transportation of passengers and freight on the enrolled and registered steamships of said plaintiff. The pleadings will be found in the report of the Commission for 1880-81, and the jurisdictional facts are set out in the opinion of said Court embodied in this report, Appendix D.

The suit was commenced on the thirtieth day of December, 1880, and was decided against the defendant on the seventeenth day of September, 1883.

For the purpose of prosecuting an appeal to the Supreme Court of the United States, which must be done, if at all, within a year from the rendition of the judgment in the lower Court, the Commission has no funds at its disposal. In this connection, the following letters and resolution are self-explanatory:

CONTROLLER'S DEPARTMENT,
SACRAMENTO; October 9, 1883. }

Hon. W. R. Andrus, Secretary:

DEAR SIR: At Governor Stoneman's suggestion, I inform you that attached to the voucher or claim for counsel fees in the case of The Pacific Coast Steamship Company vs. The Board of Railroad Commissioners, is the following: At a meeting of the Railroad Commissioners, held at their office, in the City and County of San Francisco, on December 31, 1880, a resolution was offered by Commissioner Stoneman and adopted by the Board:

"Resolved, That this Board approves of one thousand (\$1,000) dollars for Belcher & Belcher, one thousand dollars (\$1,000) for Chipman & Garter, and five hundred (\$500) dollars for Clitus Barbour, as retainers and fee in the case of The Pacific Coast Steamship Company vs. The Board of Railroad Commissioners of the State of California, with the understanding that this case is to be conducted to its final termination. This is to cover all fees and expenses for all additional counsel during the present fiscal year.

" W. R. ANDRUS, Secretary of the Board."

Respectfully,
JOHN P. DUNN, Controller.

CONTROLLER'S DEPARTMENT,
SACRAMENTO, October 11, 1883. }

Hon. W. R. Andrus, Secretary Board of Railroad Commissioners:

DEAR SIR: Yours of yesterday at hand. The Governor desires me to say for him that he understood, and it was his intention, that the fees paid in this case should carry the case to its final determination in the United States Supreme Court. That it should be no further expense to the State.

Yours truly,
JOHN P. DUNN, Controller.

On the nineteenth day of October, 1883, the foregoing letters were presented to the Commission, and thereupon Commissioner Carpenter introduced an order, which was unanimously adopted, setting out a copy of the resolution, as it is in the last of said letters, and as it appears of record in the minutes of said Commission, and concluding as follows:

Having actual knowledge of the fact that in the case to which the foregoing resolution relates, a decree has been rendered by the Circuit Court of the United States in and for the District of California; and it appearing that said decree is in favor of the Pacific Coast Steamship Company and against the Commission; and it appearing further that there has been no consultation, or concert of action, by or between the attorneys of record, on behalf of the Commission, to determine what further steps, if any, should be taken in said case, or whether an appeal from said decree is desirable. Now, therefore, said attorneys are all and severally respectfully requested to inform this Commission, in writing, whether they regard said decree as conclusive of the issues involved therein, or a "final determination" thereof within the meaning and intent of said resolution.

The Secretary is hereby directed to forward the foregoing resolution and request to each of said attorneys, or their respective firms.

Only the following letter has been received, and it is believed to express the opinion of all the attorneys, touching the terms of their employment and their obligations in the premises :

RED BLUFF, CAL., October 21, 1883.

W. R. Andrus, Esq., Secretary Board of Railroad Commissioners, San Francisco :

DEAR SIR: Replying to your resolution transmitted to us by letter of October nineteenth instant, we have to say: That we regard the case of *The Pacific Coast Steamship Company vs. Railroad Commissioners*, brought in the United States Circuit Court, and in which we were attorneys for the Board, as having been "conducted to its final determination" in that Court, and our connection therewith terminated by the decision of the Court recently announced.

We understand the law of retainer to be that the employment of the attorney ceases with the final judgment of the Court in the case in which the attorney is retained to appear. That unless there is an agreement in terms that the retainer includes services upon appeal to a higher Court, such duty would not be imposed by the original retainer.

This, we hope, answers your resolution.

Very respectfully,

CHIPMAN & GARTER.

In the absence of the desired advice by the attorneys of record, who consider their engagement at an end, the opinion of the Court is the best and most reliable in the case. Upon the points decided it appears to be supported by the authorities cited. Unless, therefore, an appeal can be taken upon a question not decided in the lower Court—namely, that of its jurisdiction—it would seem to be a good case in which to seriously consider the uncertainty of everything, except attorney's fees and costs.

On the nineteenth day of October, 1883, Commissioner Foote offered his first schedule of passenger fares, the same in form as that of Commissioner Humphreys, adopted on the twenty-sixth day of June, and applying to the same roads. It fixed a uniform maximum of three cents per mile for all of them, and adopted existing rates below it. It proceeded, therefore, upon theories rejected by the Commission, and in themselves considered inconsistent and novel. It rests upon but one of the items entering into the cost of service, and has been sanctioned by no Commission in the Union but that of Illinois, and by no Legislature but that of Texas. There are against it, therefore, not only the weight of authority and precedent, but also all the conditions of service, except distance. And even if the cost of service could be measured by distance alone, the rate per mile would be the sole and exclusive rule of compensation, and to adopt or continue differential rates below it, would be an eccentric departure therefrom. The Commission, therefore, adhered to its former reductions, and the principles upon which they were made, and when, upon the sixteenth day of November, 1883, Commissioner Foote moved the adoption of his schedule, he voted for, and Commissioners Humphreys and Carpenter against, the motion.

After making comparisons showing discrepancies in rates and classifications of freight, without any corresponding difference in cost or

conditions of service, Commissioner Carpenter prepared, and on the nineteenth day of October, introduced the order following:

[Order No. 13.]

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA.

It is hereby ordered that existing classifications and rates of charge for freight, in straight or mixed carload lots, on all railroads and lines of transportation, and the several divisions and branches thereof, within this State, owned, leased, and operated by the Central Pacific Railroad, shall be and are changed, reduced, and established, as follows, to wit:

First—For grain, including all the cereals, from San Francisco, Port Costa, Stockton, and Sacramento, to all other points, and in all directions between the same, or any of them, thirty-five per cent less than existing rates, provided that rates "in" or from tide-water, if not more than twenty per cent in excess of rates "out," or towards tide-water, shall remain as they now are.

Second—For flour and millstuffs of all kinds, in sacks or barrels, from San Francisco, Port Costa, Stockton, and Sacramento, to all other points in the State, and in all directions between such points, twenty-five per cent less than existing rates, provided that when such reduction will make the rate "in" less than the existing rate "out," present rates shall prevail.

Third—Household goods, furniture, farming utensils, live stock, and whatever is comprised in the effects of a family, or described as emigrants' movables, are included with commodities of the fourth class, and for transportation in any direction shall be subjected to the same and no higher rate of charge.

Fourth—For grain sacks, bags and bagging, agricultural implements, wagons and vehicles of all kinds, in all directions, and to all points in the State, twenty per cent less than existing rates.

Fifth—Fence wire, iron pipe, bar, sheet, and Russia iron, horseshoes and nails of all kinds, shall be and are hereby included with third class freight in the existing schedules of said company, and shall be subject to the same and no higher rate of charge.

Sixth—Blacksmiths' coals and table and dairy salt are hereby included with commodities of the fifth class, and shall take the same rate of charge.

Seventh—Wherever, in the existing freight schedules of said company, green fruit constitutes a special class, such class is hereby abolished, and all species of green fruit included therein shall be classed with beans, flaxseed, mustard seed, broomcorn, hops, and California wine in wood, and shall be subject to the same and no higher rate of charge; and whenever, in said schedule, green fruit is included with second or any higher class of freight, it shall be and is hereby included with freight of the third class, and shall be subject to the same and no higher charge.

Eighth—It is further ordered that a certified copy hereof shall be immediately served on said company, and if within three days after such service said company shall file with the Secretary of this Commission a written waiver of a separate schedule and of a printed copy thereof, and shall specify therein the time, not exceeding twenty days from the date of said service, within which said changes of classes and reductions of rates will be made and put in force, then and in that case said company may make such changes of classes and reduction of rates in its existing schedules and by such circulars to agents and in such form and manner, subject to lawful publicity, as shall be most convenient for inspection and use; and such changes and reductions shall be made in the same form and manner by the Secretary of this Commission in the schedules of said company now on file in this office, and shall take effect accordingly.

On the twenty-third day of October it was unanimously adopted, and served upon the Central Pacific Railroad Company and its leased lines. Thereupon the following correspondence occurred, which is explanatory of the foregoing order and the method of its execution:

CENTRAL PACIFIC RAILROAD COMPANY, OFFICE GENERAL MANAGER, }
SAN FRANCISCO, October 26, 1883. }

Hon. W. R. Andrus, Secretary State Board of Railroad Commissioners:

DEAR SIR: The Central Pacific Railroad Company owns receipt on the twenty-fourth instant of your communication transmitting copy of Order No. 13, made by your honorable Board.

On the sixth of July last this company entered its solemn protest against reduction in its freight charges, contemplated by your honorable Board. Among other specifications in that protest was one against the injustice of selecting the tariffs of said company alone as a subject for reduction; notwithstanding said company's system is made up of branch and leased lines, which, under existing tariffs, could not be operated with profit as separate and independent roads. Order No. 13 is made to apply to all the railroads and lines of transportation, and the several divisions and branches thereof, owned, leased, or operated by the Central Pacific Railroad Company and no other. The company respectfully submits that the charges upon all of its lines are reasonable *per se*, and that when compared—charges and character of service—with the charges and service of other railroad lines within the State, they are materially lower

than those of other lines not affected by Order No. 13, and whose tariff, so far as public knowledge of the purpose of the Commissioners goes, it is not the intention of your honorable Board to disturb. It must therefore protest that in reducing its tariffs under these circumstances your honorable Board is perpetrating a discrimination which, if legal, is unreasonable, unjust, and indefensible. It cannot, therefore, respect Order No. 13, except under protest, which it now enters and wishes spread upon the records of the Board.

Please inform the company: First—Whether it is the intention of the Board that Order No. 13 shall apply to rates of this company's steamer line on the Sacramento River? Second—Whether the following is a correct statement of the intent and meaning of specification "first" of the order: Where the present grain rates "in" from tide-water points are not more than twenty per centum above the grain rates "out" or to tide-water points, no reduction is ordered; that wherever said "in" rates do not exceed said "out" rates by more than twenty per cent they shall be reduced to that figure; provided, that in no case shall the reduction be more than thirty-five per cent from present "in" rates?

With respect to the eighth specification: The law requires the Board to make a separate schedule and serve a printed copy thereof upon the railroad company, and that the railroad company shall have twenty days after said service in which to put the tariff in effect over its lines.

This company will waive the service of a printed copy of a separate schedule prepared by the Board, provided it is accorded the necessary time in which to properly do the work said waiver imposes upon it.

A reasonable time would seem to be such as the Board would require to do the work, plus the twenty days allowed by law after service of the Board's printed schedule.

The company will further undertake to prepare and publish the necessary schedules and notices without unreasonable delay, and to do it under the supervision of the Secretary of your honorable Board. When completed, they will, under the above protest, be put into effect immediately.

Very respectfully, your obedient servant,

A. N. TOWNE, General Manager.

By J. C. STUBBS, Freight Traffic Manager.

THE ANSWER OF THE BOARD.

In answer to the questions propounded, the following letter, which explains itself, has been sent to Mr. Towne:

OFFICE BOARD OF RAILROAD COMMISSIONERS,
SAN FRANCISCO, October 29, 1883.

To A. N. Towne, General Manager Central Pacific Railroad Company:

SIR: Your letter of the sixteenth instant by J. C. Stubbs, Freight Traffic Manager, acknowledging receipt of Order No. 13 of this Commission, has been received and considered. We find in your communication no reason to recede from the reductions upon which we had determined. And while adhering to the order substantially as it is, we disclaim and deny the alleged discrimination against your company, or any of the roads which it owns or leases and operates. In assuming this control to the extent of our jurisdiction, it was proper to commence somewhere, and we submit that the precedence accorded to the Central Pacific and its leased lines was to have been expected, and is not a just cause of complaint. It is rather an earnest of the attention and an example of the regulating power to which other companies are subject, and from which they will not be exempted.

Our answer to questions, touching the scope and meaning of the order, are as follows:

First—The leading object of the order is to reach and reduce non-competitive inland rates, and not those of your company's steamer line on the Sacramento River. It is intended to affect only such freight charges as are included in the specific classes and schedules of inland rates.

Second—All grain rates "in" from tide-water, which are now not more than twenty per cent in excess of rates "out," or to tide-water, are to remain as they are.

Subject to this limit, the reductions to be made may be less but never more than thirty-five per cent of existing rates. We fail to see any difference of opinion relating to this part of the order.

In accordance with the order thus explained, the changes of classification are to be made, and the necessary tabulation of rates are to be prepared. Thanking you for the waiver of your technical right to cast the entire work upon the Commission, its Secretary is authorized by a standing order to avail himself of your assistance, and will have such extension of time as shall be found necessary for the clerical labor to be performed.

Very truly,

G. J. CARPENTER,
W. P. HUMPHREYS,
W. W. FOOTE,
Railroad Commissioners.

It will be seen that the reductions upon cereals and millstuffs are made directly upon inland rates, and in such manner as not to adopt but to abolish discriminations against interior points, which could only have been discovered by painstaking comparisons. And an examination of the nature and varying percentage of the reductions made, will show how some of the most constant and prolific causes of complaint have been reached and removed. The following tables will serve as brief illustrations of the comparisons upon which the order was based, and of the reductions by change of classification:

SOUTHERN PACIFIC RAILROAD.

From San Francisco south to Yuma.	Difference in Rates by Classes. (In Cents, per 2,000 lbs.)								
Miles.	First	Second	Difference per cent.	Second	Third	Difference per cent.	Third	Fourth	Difference per cent.
10	135	115	15	115	115		115	100	13
50	300	260	13	260	220	15	220	130	41
80	320	280	13	280	240	14	240	200	25
110	500	410	18	410	360	12	360	280	22
140	820	740	10	740	670	9	670	380	43
170	1,120	1,020	9	1,020	930	9	930	430	54
200	1,380	1,310	5	1,310	1,180	10	1,180	475	51
230	1,680	1,600	4	1,600	1,460	9	1,460	525	64
260	2,040	1,860	9	1,860	1,700	9	1,700	585	66
290	2,300	2,060	10	2,060	1,900	8	1,900	635	72
340	2,520	2,200	12	2,200	2,080	5	2,080	715	66
390	2,600	2,300	12	2,300	2,160	6	2,160	795	83
440	2,600	2,300	12	2,300	2,160	6	2,160	880	60
500	2,600	2,300	12	2,300	2,160	6	2,160	950	56
550	2,800	2,300	18	2,300	2,160	6	2,160	1,090	50
570	3,000	2,480	14	2,480	2,160	13	2,160	1,135	47
590	3,300	2,780	16	2,780	2,340	16	2,340	1,200	48
620	3,980	3,240	19	3,240	2,780	14	2,780	1,300	53
660	4,420	3,860	13	3,860	3,420	11	3,420	1,430	58
730	5,320	4,740	11	4,740	4,000	15	4,000	1,580	61

THE CENTRAL PACIFIC.

From San Francisco north between Sacramento and Redding.	Oregon Division—C. P. R. R. Difference in Rates by Classes. (In cents, per 2,000 lbs.)											
Miles.	First -----	Second -----	Difference per cent. -----	Second -----	Third -----	Difference per cent. -----	Third -----	Fourth -----	Difference per cent. -----	Fourth -----	Fifth -----	Difference per cent. -----
150 -----	480	440	8	440	400	9	400	200	50	200	200	-----
170 -----	520	460	11	460	400	13	400	300	25	300	280	-----
210 -----	580	500	14	500	440	12	440	440	-----	440	400	-----
240 -----	700	640	8	640	580	9	580	530	8	530	490	11
260 -----	900	840	7	840	760	9	760	600	21	600	560	-----
300 -----	1,360	1,140	16	1,140	1,060	7	1,060	690	35	690	650	-----
320 -----	1,520	1,220	19	1,220	1,140	6	1,140	730	36	730	690	-----

FOURTH ANNUAL REPORT OF THE

REDUCTION ON GREEN FRUIT, IN CENTS, PER TWO THOUSAND POUNDS.

To San Francisco from—	Old.	New.	Per cent. Decrease.
Sobrante	140	90	35.5
Haywards	160	140	12.5
San José	260	247	5
Livermore	260	230	11.5
Bethany	280	190	32
Lodi	300	280	7
Tehama	980	840	14.33
Red Bluff	1,000	840	16
Redding	1,000	840	16
Morrano	340	230	32.33
Modesto	480	310	35.5
Merced	750	475	36.5
Berenda	835	505	40
Fresno	880	569	36
Goshen	940	600	36
Hanford	965	600	37
Huron	1,000	600	40
Tulare	960	600	38
Sumner	1,000	600	40

On the twenty-first day of December, 1883, the new classification and schedule, containing two hundred and eighty-two printed pages, averaging eight columns of figures to the page, was submitted to the Commission by its Secretary, under whose supervision they had been prepared. Having been examined and found to be in accordance with the order directing their preparation, they were established and filed in the office as follows:

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA.

The said Commission, at a special meeting thereof, duly called and held at its office in the City of San Francisco, December 27, 1883, to consider the changes of classification and schedule of freight rates submitted by its Secretary at its last regular meeting for examination; and it appearing that they have been prepared and are in all respects in conformity with Order No. 13 of the Commission, and that the reductions have been made and are in accordance therewith: Now, therefore, it is hereby ordered by the Commission that said changes of classification and schedule be filed and remain of record in this office, and that they be and are hereby established, to take effect and be in force on all and each of the roads to which they apply, on and after the first day of January, 1884.

Thereupon written notice, of which the following is a copy, was forwarded to the General Manager of the companies to be affected thereby:

OFFICE OF THE BOARD OF RAILROAD COMMISSIONERS, STATE OF CALIFORNIA,
SAN FRANCISCO, December 27, 1883. }

A. N. Towne, General Manager Central Pacific Railroad Company and Leased Lines:

SIR: On the twenty-first instant the Secretary of this Commission submitted for examination the freight classifications and schedule containing two hundred and eighty-two pages of printed matter, which had been prepared under his supervision, with your obliging and effective assistance. Having been examined and found to be in accordance with Order No. 13 of this Commission, prescribing the changes of classification and reductions to be made, they have been filed and established in this office, to take effect and be in force on all roads to which they apply, on and after the first day of January, A. D. 1884.

G. J. CARPENTER,
President Railroad Commission.

WILLIAM P. HUMPHREYS,
Railroad Commissioner, Second District.

On the sixteenth day of November, 1883, Commissioner Foote introduced the draft of an order for the reduction of certain freight rates, as follows:

It is hereby ordered, that on all railroads and lines of transportation in this State, owned, leased, or operated by the Central Pacific Railroad Company, freight rates shall be and are hereby reduced and established as follows:

First—On grain, including all the cereals, from all interior points in this State to all other interior points, and to all tide-water points, in carloads straight or mixed, there shall be a reduction of twenty (20) per cent from the rates now charged, per tariff books of June 1, 1881. Upon grain in less than carload lots the rates shall be reduced thirty (30) per cent in all cases from those now in force.

Second—Green fruit, in less than carload lots, where now rated as *first class*, shall be rated as *third class*, per tariff books on file in this office.

Third—Upon wool, from all points in this State, a reduction of twenty (20) per cent, whether shipped in carload lots or in smaller quantities.

Fourth—Upon live stock of all kinds, in carload lots, to and from all points in this State, now shipped under special contract rates, there shall be made a reduction of twenty (20) per cent upon said rates as they are now charged.

Fifth—Upon beans, potatoes, flaxseed, alfalfa seed, hops, onions, and mustard seed, between all points in this State in either direction and in any quantity, and irrespective of the classification which now obtains, there shall be a reduction of twenty (20) per cent from existing rates.

Sixth—Upon wood, coal, lumber, shingles, laths, brick, cement, lime, and ores of all kinds, to and from all points in this State, and irrespective of present classification, in carload lots or in smaller quantities, there shall be a reduction of twenty (20) per cent from existing rates.

Seventh—It is further ordered that a certified copy of this order shall be immediately served upon said company, and if within three days after such service said company shall file a written waiver with the Secretary of said Board of Railroad Commissioners of the State of California of a separate schedule and printed copy thereof, and shall specify therein the time, not exceeding twenty days from the date of said service (unless upon good cause shown said Board of Railroad Commissioners shall grant further time), within which said changes of rates and reductions will be made and put in force, then, and in that case, said company may make such changes and reductions in its existing schedule, and post the same according to law and in accordance with this order; *provided*, that if the company accept this order its schedules during preparation shall be open to inspection by the Secretary or any member of said Board. *It is further ordered*, in the event that said company shall fail to accept this order within the time named, that the Secretary is hereby directed to prepare freight schedules as soon as possible in accordance with this order.

This is the familiar requisition in a new form, for lumping reductions of existing rates, unsupported by any comparative statement showing what they are or what they should be. It proceeds upon the discarded hypothesis, that they are all too high in the same proportion, and thus, without checking or comparing them, rests upon proposed reductions in the same ratio. In short, it proposes blind movement without method and without such prerequisite examinations and equations of existing rates as shall make the preparation of one schedule subserve the double purpose of reduction and regulation; and as a uniform reduction by one schedule would adopt and establish existing discriminations, these again must be found and eliminated, if at all, in the only possible way, namely: by detailed comparisons and differential reductions. That such a proposition can never lessen, but may double the work it postpones or avoids, is too evident for denial or dispute. Hence, for the purpose of examination, its consideration has been continued.

On the nineteenth day of October, 1883, on motion of Commissioner Carpenter, the Northern Pacific Railroad Company was ordered to show cause why the maximum of passenger fares on its road should not be reduced to five cents per mile. Thereafter, on the sixteenth day of November, N. D. Rideout, chief owner, and A. J. Binney, General Manager of said road, appeared and satisfied the Commission that such reduction should not be made. And upon the repre-

sentation of the respondents, that round-trip tickets would benefit the greater number of their patrons, and would be issued, the proceeding was unanimously dismissed.

At the meeting of the Commission held on the sixteenth day of November, 1883, on motion of Commissioner Humphreys, the seven railroad companies following, namely: The South Pacific Coast, North Pacific Coast, San Francisco and North Pacific, Vaca Valley and Clear Lake, Nevada County Narrow Gauge, Santa Cruz, and the California Southern, were ordered to appear and show cause, if any they had, why reductions of passenger and freight rates corresponding to those made on the Central Pacific system should not be made on their respective roads.

On the twenty-first day of December the hearing of the San Francisco and North Pacific Railroad Company was continued till the eighteenth day of January, 1884. The other companies summoned appeared by their legal representatives and contested the proposed reductions. The verified statements of those not making oral arguments will be found in Appendix E. Facts and figures showing the financial conditions of the same companies, and also of the California Northern Railroad Company, will be found in Appendix F. The documentary and other evidence is all to the same effect, and for the purpose of showing the injustice and evil consequences of establishing the same rates of charge, on all roads of the same or different systems, is cumulative and conclusive.

There are three thousand one hundred and seventy miles of railroad in this State, two thousand nine hundred and fifty-seven miles of broad-gauge, and two hundred and thirteen miles of narrow-gauge. Of this aggregate mileage, two thousand and nineteen miles, including trunk and branch lines, are operated under the same management, but subject to many different and distinct conditions of ownership and lease, by the Central Pacific Railroad Company, and are all included in its annual statement to this office, of which Appendix F is a synopsis. Other companies, under separate but substantially similar management, own and operate one thousand one hundred and fifty-one miles of road. Omitting details, as to each, it may be affirmed generally, of all the roads in this State, that by yearly betterments and renewals of track, equipment, stations, and terminal facilities, they are kept in a good and constantly improving condition. And that the railroad service of this State is fully equal, if not superior, to that of any other, for safety, comfort, and convenience resulting from cautious and systematic management, is the concurrent testimony of observing and competent judges. Admitting, therefore, the general superiority of the service, and that no official supervision could exempt it from errors and accidents, it, nevertheless, remains to be said, that until this Commission shall be authorized by statute to make such inspections and investigations, orders and decisions, as go to the safe and convenient public use of railroads within its jurisdiction, it will remain, in that respect, a powerless anomaly among Railroad Commissions of this and all other countries.

From information furnished by A. N. Towne, General Manager of the Central Pacific Railroad Company and its leased lines, the following synopsis is deemed worthy of a place in this report. It is believed to be a correct general statement of the improvements, bet-

terments, renewals, and extensions on the system of roads in his charge during the past year.

The road on the west side of the Sacramento River to Tehama was completed at the beginning of the year. On the line of the California and Oregon extension of the Central Pacific road, there have been twenty miles of new track laid, besides a large amount of grading and work on tunnels. The contemplated connection at the State line with the Oregon and California road is assured, and will probably be made in the early part of 1885.

The Colorado Division of the Southern Pacific system has been extended one hundred and eleven and forty-three hundredths miles, from near Ash Hill Station to the Colorado River, at the Needles, where it connects with the Atlantic and Pacific Railroad.

The most important renewals and betterments to track and terminal facilities, within the State of California for the first ten months of the year, are briefly as follows:

Between Lathrop and Goshen, in round numbers, twenty-nine miles of track were renewed with steel rail; between Oakland Wharf and Niles, one mile; four miles, from Oakland Point to corner of First and Webster Streets, Oakland; thence, to Mastic Station, Alameda, also laid with steel rail; between San José and Brighton, two miles; Roseville and Reading, three miles; Goshen and Mojave, thirteen and a half miles; Mojave and Los Angeles, three miles; Los Angeles and Yuma, sixteen miles; also, about three miles of new steel track at Los Angeles Station.

The number of ties used within the State between January first, and October thirty-first, was two hundred and thirty-three thousand two hundred and fifty-eight.

Structures erected during the year 1883, in the way of bridges and buildings, are as follows:

San Francisco, freight shed at Sixth and King Streets, three hundred and six by seventy-five feet; Oakland Wharf, coal bunkers, three hundred and four by thirty-three feet; coal bunkers at Port Costa, eight hundred by thirty-three feet; combination freight and passenger depot at San Lorenzo, seventy-eight by twenty-one feet; Watts Station depot, twenty-one by eleven feet; oil and pump house at Port Costa and Benicia, ferry slip and 'extra apron, covering one hundred and ten feet each; covering bridges at Story and Thomas Creek; Maxwell, section house; Sacramento, wheel foundry, with attached sheds, engine house, etc., four hundred by one hundred feet; Sacramento, tunnels under track in yard; Rocklin, sand house, thirty by thirty-four; Rocklin, blacksmith shop, forty-one by twenty-six; Sacramento, casting shed, one hundred by twenty; snow-plow house at Truckee; Anderson, freight house extension, fifty by thirty-two; water station and wagon bridge, Vina and Tehama; combination depots, ninety-three by twenty-five, at Athlone, Fowler, and Selma; cottages for employes at Mojave, four, thirty-five by twenty-six; trainmen's house, same place, seventy-six by seventeen; employes' cottages at Sumner, four, thirty-five by twenty-six; coal house at Sumner; two water stations, covering two iron turn-tables; extending two round-houses, Tulare and Sumner; Bealville, telegraph office, twenty-seven by thirteen; combination hotel and depot at Los Angeles, three hundred and forty-seven by thirty-one feet; also, same place, coal house, two hundred and sixteen by sixty feet, and addition to freight house, one hundred and twenty by forty feet; section house

and telegraph office at Lancaster and San Fernando; hotel and engine house, seventeen by fourteen, at Monte; round-house at Seven Palms; stock corral at Campton; coal platform at Davis; wagon bridge and stock corral at Cornwall and Creeger's farm.

In addition to the above, there were several bridges and buildings that were burned and rebuilt, with improvements on the original. These, together with improvements on the Colorado Division, and on the Oregon extension, are not taken into account.

On the Sacramento and Placerville Railroad the renewals and betterments, for the first eleven months of the year, were as follows: New ties placed in track, six thousand seven hundred and eighty-five, at a cost of \$3,256 80. Trestle at Latrobe, seven hundred and fifty-five feet long, forty-five feet high, supported by forty-six bents, and covered by one thousand five hundred feet of fifty-pound steel rail, entirely rebuilt with new materials, at a cost of \$8,751 54. Also, other repairs of bridges, etc., amounting to \$502 26.

In the month of May the Commission unanimously determined to itinerate through the southern counties of the State. Upon a written invitation by all of its members, it was accompanied by a freight agent of the Central Pacific Railroad Company. With safety and convenience it was conveyed to and from its appointments in a special car, promptly and liberally provided and furnished by the same corporation. It went as far south as San Diego, and as far north as Stockton. As per published appointments it held nine public meetings. At Colton, Los Angeles, and Stockton, many people being present, no complaints were made. At Bakersfield, Visalia, Hanford, Fresno, Merced, and Modesto complaints and speeches were made. Although not always germane to subjects to be considered by the Commission, or within its jurisdiction, they were generally against railroad corporations, or some alleged abuse in their management. Some related to former rates, which upon examination of the schedules were found to have been reduced, some to individual grievances and disputes which were outlawed in the Courts, and not within the jurisdiction of the Commission, and some to local and special excesses and inequalities of fare and freight, which have since been regulated and reduced. As was to have been presumed, the most valuable and reliable information obtained was from citizens who belonged to the commercial and producing classes, and, therefore, fairly and properly represent them, and in communications dispassionately written, submitted, and filed for reference.

During the past year, at its office in San Francisco, the Commission has held forty-three regular meetings, with mixed results. Except for hearing and determining complaints, receiving and making reports, and deciding propositions before it, they have been the least profitable of its proceedings. The sinister tendency of those debating unfamiliar subjects, is to something else. Wherefore it is that discussions and inquiries properly involving only the present value, ownership, and financial condition of railroads, and what is reasonable compensation for service thereon, have so often drifted into stale controversies concerning their construction, the government aid they have received, and their resulting moral obligations to the public. Thus it is that so much of the testimony taken by the Commission is immaterial, and that so much of the discussion before it has been uninformative and inconsequential. But notwithstanding mistakes, of which it is fully conscious, it has succeeded in bringing out and

preserving, as the basis of future action, a large amount of evidence and statistics, both relevant and material to the work and business of the office.

Since the ninth day of January, 1883, this Commission has been in session next door to the importing firms of San Francisco, all but one of which are said to have entered into so called special contracts with the Union Pacific and other eastern railway companies, for the transportation of west bound through freight, all rail, at *less than schedule rates*, a fact that may account for the apparent satisfaction of the contracting parties. With the contracting eastern carriers the Central Pacific Railroad Company prorates on all through traffic. The contracts are executory and contain a clause in restraint of patronage to ocean carriers on such freight, coupled with penalties for its violation, and some other provisions, which might, in a proper case, be held to be void. Every one of them is a contract between citizens of this and other States, and from beginning to end, judging from a blank form, which is all that has ever been exhibited to the Commission, relates to inter-State commerce. In a suit, therefore, to enforce or rescind one of these contracts, or to annul the clauses referred to, the parties would find themselves in the Federal Courts.

But the purpose of this reference is not to indicate a remedy for the alleged wrongs of contracting firms, all of which are presumed to know their rights, and to have none which they dare not maintain. It is not to notice, much less to answer, sensational appeals on their behalf by irresponsible proxies, in whose mouths it does not lie to complain for them. It is not to tender advice or sympathy, nor to prejudge acts or contracts, of which absolutely nothing is known, except by the most unreliable hearsay, or some irrelevant testimony, or side admission in a collateral proceeding, the record of which, as every lawyer knows, would be inadmissible in any case between the contracting parties. It is briefly to say for the Commission, that none but the real parties in interest, by themselves, or their authorized agents, can put such powers as it has in motion. Until they have done so, it will keep within the inviolable circle of judicial fairness, and reserve its decision.

The Constitution permits and therefore intends unanimity of opinion and action in this office. It nevertheless provides against irresponsible and distracting opposition. It says: "The act of a majority of said Commissioners shall be deemed the act of said Commission." (Article 12, Section 22.) By requiring an annual report it makes that the last act of the year. It very properly makes each administration an entirety, and couples with its responsibilities the rightful exercise of undivided power. The Commission, therefore, in preparing this report, as its own act, omitting only inconsequential talk and dispute, has dwelt upon the weightier matters of the law and its requirements. Conscious of mistakes, but avoiding no responsibility, it has endeavored to present a very full record of the year's transactions. The printed copies of resolutions, orders, decisions, and rulings, and other documents, have been compared with their originals on file and of record and used, thus condensing the manuscript and facilitating reference.

The theories and practice which make railroad management the subject of careful study and conservative control are not new in this year nor in this office. The first Transportation Commission of this State in its last report gave them its unqualified and repeated

approval. With a much riper experience than our own it said: "The subject must be approached step by step, and the way carefully studied as we proceed." In this conclusion every Railway Commission in the Union concurs. That this Commission came to the same conclusion at the beginning of its present term is perhaps no merit of its own. As a tried and trusted ex-Commissioner of Iowa has truthfully said, only freshmen, by an over-estimate of themselves, ever held any other opinion. And it may be doubted if any conscientious officer ever approached the subject, with an intelligent estimate of its real magnitude and of the growing and enduring interests it involves, who did not speedily discover and confess the duty and necessity of research and reflection.

As only steps thus taken are progress, and only proceedings thus matured can or should be enforced, the Commission has found in them its best policy and highest duty. The first order of business, therefore, was to consider and formulate its methods. These have been illustrated by the resulting orders, decisions, and official acts outlined in this report. The only object of their exposition has been to submit the record of accomplished facts with some of the reasons therefor. To the extent that they are consistent, consecutive, and advancing results of safe, practical, and effective modes of procedure, they are good beginnings and precedents for progressive and continuous work. To this there is practically no end, and in the long run it is the best test of the processes by which it is prosecuted. For the Commission, therefore, there is no alternative but to pursue its work by the methods adopted, subject to the inadequate means at its command, and to such improvements as may come from further experience and information. The results thus attained will be the subjects of future reports.

Respectfully submitted.

G. J. CARPENTER,
President Board of Railroad Commissioners, State of California.

WM. P. HUMPHREYS,
Railroad Commissioner, Second District.

Attest :
[SEAL.]

W. R. ANDRUS,
Secretary of the Board.

APPENDICES.

APPENDIX A.

TEXT OF MANAGER TOWNE'S REPLY TO THE RAILROAD COMMISSION—
COST OF THE CENTRAL AND SOUTHERN PACIFIC AND OTHER GREAT
LINES—GROSS EARNINGS AND OPERATING EXPENSES COMPARED—
VALUABLE STATISTICS REGARDING ACREAGE AND POPULATION
SERVED BY THE LINES—RENTS PAID FOR LEASED LINES—INTER-
STATE CONNECTIONS—DIFFERENTIAL RATES AND SPECIAL CON-
TRACTS—AVERAGE FREIGHT AND PASSENGER RATES PER MILE—
INFORMATION NEVER BEFORE PUBLISHED.

SAN FRANCISCO, February 20, 1883.

To the honorable Board of State Railroad Commissioners:

GENTLEMEN: At a session of your honorable Board held on Monday, the fifth instant, the following circular (No. 2) was adopted as a substitute for No. 1, and was handed to me on the ninth instant.

In response to the inquiries, I beg leave to answer each in its order as best I can from the statistics and information in my possession.

You say: Having under consideration the rates of charges and methods of business in force in the passenger and freight departments of the transportation companies subject to our supervision in this State, and in the interest of all concerned, desiring to make only such revision and changes of existing schedules, classifications, and rates of charges as, upon examination and reflection, we shall deem just and reasonable, we respectfully and urgently request that at your earliest convenience, within twenty days, if you have not already done so, you prepare and file in this office verified statements and exhibits in answer to our first circular, to wit:

TOTAL COST OF THE ROAD.

First—What has been the total cost of your road and equipments to date? If any company owns, operates, or controls more than one line of road, please state the cost of each separate line.

Answer—The cost of the Central Pacific Railroad, including right of way, depots, buildings, wharves, docks, etc., to December 31, 1882, is \$138,553,455 29.

The cost of equipment, including shops, machinery, real estate, river steamers, material, fuel, etc., is \$16,665,205 89.

Of this last amount there is over \$4,000,000 of material and fuel on hand, which is necessary on account of being so far removed from basis of supplies.

The cost of the roads below named, together with equipment, real estate, shops, etc., was:

Southern Pacific of California.....	\$65,378,080 00
Southern Pacific of Arizona.....	29,697,188 59
Southern Pacific of New Mexico.....	11,069,800 15
Los Angeles and San Diego.....	1,113,490 20
Los Angeles and Independence.....	510,321 44
California Pacific.....	19,128,364 15
Stockton and Copperopolis.....	733,991 86
Northern Railway.....	10,894,830 56
San Pablo and Tulare.....	2,914,822 49
Amador Branch.....	212,167 15
Sacramento and Placerville.....	3,050,234 70

GROSS EARNINGS AND OPERATING EXPENSES.

Second—What were your gross earnings for the year 1882?

Answer—Gross earnings for the year 1882 were \$25,662,757 12.

Third—What were your operating expenses for the year 1882?

Answer—Operating expenses for 1882, exclusive of interest, taxes, general, legal, engineering, and land department expenses, which amounted to \$4,477,996 57, were \$16,067,183 66.

NOTE.—Operating expenses as above.....	\$16,067,183 66
Other expenses as above.....	4,477,996 57
Total expense.....	\$20,545,180 23
Additional payments and requirements from income of 1882, company's sinking fund.....	1,034,760 00
U. S. Government sinking fund and transportation eastward.....	1,100,000 00
Total.....	\$22,679,940 23

PROPORTION OF OPERATING EXPENSES TO GROSS EARNINGS.

Fourth—State the per cent of operating expenses as compared to gross earnings for each year since the road has been in operation.

Answer—The per cent of operating expenses to gross earnings each year, from 1864 to 1882, are as follows, to wit:

1864-5.....	36.77	1874.....	38.71
1866.....	23.22	1875.....	41.41
1867.....	23.27	1876.....	46.23
1868.....	36.46	1877.....	47.20
1869.....	52.78	1878.....	50.08
1870.....	49.31	1879.....	59.51
1871.....	43.34	1880.....	58.73
1872.....	41.88	1881.....	57.52
1873.....	38.63	1882.....	62.60

VALUATION AND TAXES.

Fifth—What is the total value of all your property in this State at this time?

Answer—I am unable to give you the desired information.

Sixth—What was the total amount of taxes assessed against the road in this State, during the past fiscal year? Please state assessed valuation in each county of this State, and also whether the taxes assessed have been paid.

NOTE.—For answer please refer to annexed schedule, the aggregates of which are as follows:

Value of railroad.....	\$23,485,629 00
Value of other property.....	5,431,665 00
Total value.....	28,916,694 00
Taxes charged.....	475,653 41
- paid.....	236,337 57

SCHEDULE

Showing the value of property by counties assessed to the Central Pacific Railroad Company, leased lines, etc., for the year 1882, in California; the amount of taxes charged against the same, and the amount of taxes paid:

	Valuation.	Amount Taxes Charged.	Amount Taxes Paid.
Alameda	\$2,980,364	\$35,731 61	\$7,146 77
Alpine			
Amador	54,008	1,317 18	1,317 18
Butte	1,138,760	17,862 41	17,862 41
Calaveras	6,160	154 00	154 00
Colusa	740,764	10,412 02	3,972 02
Contra Costa	630,120	10,807 75	542 65
Del Norte			
El Dorado	157,838	3,377 73	3,377 73
Fresno	1,320,779	23,843 72	1,770 59
Humboldt			
Inyo			
Kern	1,542,200	30,844 00	30,844 00
Kern	38,500	770 00	770 00
Lassen			
Los Angeles	2,027,475	28,919 89	7,687 63
Marin			
Mariposa			
Mendocino			
Merced	699,607	14,168 79	14,168 79
Modoc			
Mono			
Monterey			
Napa	538,300	9,586 36	97 70
Nevada	965,530	16,956 58	13,511 87
Placer { D. No. 1 }	2,940,525	47,129 00	30,373 43
Placer { D. No. 2 }			
Placer { D. No. 3 }			
Plumas	3,910	97 75	97 75
Sacramento	1,849,044	31,691 16	12,704 66
San Benito			
San Bernardino	649,727	10,915 42	1,283 97
San Diego	1,688,050	24,485 43	24,485 43
San Francisco	934,789	16,818 79	12,882 57
San Joaquin	1,847,110	22,756 41	771 82
San Luis Obispo			
San Mateo	1,255	20 10	20 10
Santa Barbara			
Santa Clara	230,700	4,125 21	26 04
Santa Cruz			
Shasta	490,288	13,176 88	5,688 86
Sierra	70,290	1,968 12	1,968 12
Siskiyou			
Solano	719,950	13,174 94	556 92
Sonoma			
Stanislaus	545,442	7,720 29	992 28
Sutter	164,878	2,966 00	341 00
Tehama	1,112,142	18,872 14	8,838 49
Trinity			
Tulare	1,753,444	33,593 27	17,166 63
Tuolumne			
Ventura			
Yolo	741,980	12,236 06	12,236 06
Yuba	332,165	9,154 40	2,680 10
Total	\$28,916,694	\$475,653 41	\$236,337 57

Seventh—Please furnish a schedule of the rates of fare and freight charged by you in this State?

Answer—Full line of schedules has been sent to W. R. Andrus, Secretary of the Board.

Eighth—How much of your gross earnings came from local passengers? How much from local freights?

Answer—Gross earnings from the entire system of local passengers in 1882 were \$4,980,370 51; and from local freights, \$12,340,777 31.

Our statistics are not made up so as to show how much of each was in the State of California.

SALARIES.

Ninth—What were your total expenses for salaries to employés for the year 1882? Please state the names, official designations, and salaries of every person in your employment, in any capacity whatever, who receives as much or more than \$5,000 per annum.

Answer—The amount paid to employés for salaries during the year 1882 was \$8,213,130 80, of which there were twenty-three persons who received as much as or more than \$5,000 per annum. This amount in the aggregate was \$214,800, or an average of \$9,339 13.

RENTS PAID FOR LEASED LINES.

Tenth—What amount of money do you pay as rent for each of your leased lines? Please state the rent per mile as well as the gross sum for each line.

Answer—Below please find statement in detail:

	Per Mile.	Amount.
Southern Pacific Railroad of California.....	\$250 00	\$1,650,600 00
Southern Pacific Railroad of Arizona.....	135 00	622,355 40
Southern Pacific Railroad of New Mexico.....	135 00	270,896 40
Los Angeles and San Diego Railroad.....	100 00	33,384 00
Los Angeles and Independence Railroad.....	100 00	20,196 00
Amador Branch.....	154 41	42,000 00
Berkeley Branch.....	200 00	9,216 00
Sacramento and Placerville Railroad (between Sacramento and Brighton).....	1,440 00	7,200 00
California Pacific Railroad.....	5,194 00	600,000 00
Stockton and Copperopolis Railroad.....	510 00	25,000 00
Union Pacific Railway Company (between Promontory and Ogden), based on net earnings per mile.....		46,595 65
Northern Railway—\$300 per mile to Willows, \$150 per mile above Willows.....		590,617 20
Southern Pacific, east of Mojave.....	125 00	16,066 00
Galveston, Harrisburg and San Antonio Railway, \$83 33 per mile.....		\$296,759 24
Less paid Texas and Pacific Railway.....	\$54,900 00	241,859 24
Colorado River bridge, \$1,000 per month.....		12,000 00
Rio Grande River bridge, \$1,000 per month.....		12,000 00
Total.....		\$4,199,985 89

Of this amount there is properly chargeable to the previous year, \$2,741 95.

The above questions and answers pertain to Circular No. 1—the following to Substitute No. 2.

"In addition to the information heretofore requested of you, we desire further statements and exhibits showing:

"*First* (B)—The name and principal place of business of your railroad company."

Answer—

Central Pacific Railroad Company of California.
California Pacific Railroad Company.
Stockton and Copperopolis Railroad Company.
San Pablo and Tulare Railroad Company.
Northern Railway.
Amador Branch Railroad Company.
Berkeley Branch Railroad Company.
Southern Pacific Railroad Company of California.
Southern Pacific Railroad Company of Arizona.
Southern Pacific Railroad Company of New Mexico.
Los Angeles and San Diego Railroad Company.
Los Angeles and Independence Railroad Company.

Principal place of business, San Francisco, California.

THE GENERAL SYSTEM OF ROADS OUTLINED.

"*Second* (B)—A general description of the line or system of railroads it owns and operates.

"*Third* (B)—The same of its road or roads within this State."

Answer—To these two questions we beg to submit a graphic answer in the form of a blue printed map, twenty-six feet long, exhibiting the general physical characteristics of all lines (owned or leased) operated by the Central Pacific Railroad Company west of Ogden, Utah, and El Paso, Texas, excepting the new lines, for which our engineers have not yet been able to compile the necessary data, viz.: the extension of the Northern Railway from Willows to Tehama, recently completed, and the Colorado Division of the Southern Pacific, now under construction, from Mohave to the Needles, on the Colorado River.

Please note that the map in question bears profiles of the respective lines (on scales of ten miles to the inch horizontal, and one thousand feet to the inch vertical), the names of all stations, and the elevations of same in feet and hundredths above the sea level; the distance between stations in miles and hundredths of a mile; the maximum grade between stations in feet per mile, and the length of curved line in miles, divided to show, for short section of each road, the aggregate length of curves under six degrees, those between six and eight degrees, and those from eight to ten degrees, the latter rate of curvature being the maximum; the location of all fuel stations, water stations, station buildings (depots), track scales, stock corrals, turn-tables, engine houses, and section (track) houses are also indicated on face of the map.

INTER-STATE CONNECTIONS.

"*Fourth* (B)—The inter-State connections of the overland roads and their local relations to each other and to their respective feeders and branches."

Answer—The inter-State connections with the overland roads are as follows: The Central Pacific connects with the Union Pacific, the

Utah and Northern and the Utah Central at Ogden ; with the Eureka and Palisade Railroad at Palisade ; with the Nevada Central at Battle Mountain ; with the Virginia and Truckee and Nevada and Oregon Railroads at Reno.

The Southern Pacific connects with the California Southern Railway at Colton ; with the Sonora Railroad at Benson ; with the Atchison, Topeka, and Santa Fé Railroad at Deming ; with the Galveston, Harrisburg, and San Antonio Railway, and Texas and Pacific Railway at El Paso.

The inter-State connections, in their local relations, are independent of each other, except that through rates are frequently made on low-class freights to develop the particular resources of localities which they serve ; and the same is applicable to the feeders and branches within this State.

DIFFERENTIAL RATES.

"*Fifth* (B)—The reason, if any, for differential rates on a system of cooperating roads."

Answer—Assuming that the term "coöperating" means "branch," in this connection, there are many reasons why rates on branch roads should be higher than on main lines. Among these we may state that the cost per ton of moving freight over a road is in inverse ratio to the amount carried.

In operating a short road, with limited traffic, the fixed expenses (by which are meant interest, taxes, station expense, renewals of perishable property, such as ties, fences, etc.), are the same, regardless of the amount of freight moved, the motive power being a comparatively small part of the cost of the service ; and thus, where the volume of business is small, the cost per mile is correspondingly high.

BRANCH ROADS AND MAIN LINES.

"*Sixth* (B)—The extent to which such feeders and branches are dependent for continued existence and operation upon the trade and travel tributary to each."

Answer—Branch roads, in most cases, could not exist in California without main lines ; and the extent to which this is true is evidenced by the following showing of the gross earnings and expenses of three branches operated by this company, although in each case, in apportioning earnings on joint business at through rates, the branch roads are allowed two miles for each mile of the main line:

<i>Amador Branch—</i>	
Gross earnings.....	\$50,692 77
Operating expenses and interest on bonded debt	61,203 05
Loss	\$10,510 28
<i>Los Angeles and San Diego Railroad—</i>	
Gross earnings.....	\$52,695 04
Operating expenses and interest on bonded debt.....	72,928 08
Loss	\$20,233 04
<i>Los Angeles and Independence Railroad—</i>	
Gross earnings.....	\$15,461 71
Operating expenses and interest on bonded debt	36,784 65
Loss	\$21,322 94

The Sacramento and Placerville Railroad, though not operated by the Central Pacific, is dependent upon it to a certain extent; and joint rates are made which will allow the short road higher rates per mile than the longer one.

The same is true of the Vaca Valley and Clear Lake road.

The same constructive mileage is allowed the Stockton and Copperopolis Railroad; but, though it runs through a good country, its receipts are barely sufficient to cover running expenses and interest.

REPAIRS AND EXTENSIONS COME OUT OF EARNINGS.

"*Seventh (B)*—The ways and means for repairs, renewals, betterments, and extensions necessary to the safety, public use, and continued operation of such feeders and branches, or any of them."

Answer—The ways and means for repairs (renewals) and betterments necessary to the safety, public use, and continued operation of such branch lines, must come from the earnings, as there is no other source from which they can be obtained.

The means for extensions, branch lines, or feeders must come from those seeking a safe place for their surplus capital. This may come from large, but more likely from small, investors, desirous of placing their means in some permanent and paying security. Therefore, confidence in the ability of the property to earn a sufficient amount to meet the obligations is an absolute necessity, which confidence is liable to be shaken unless the rate-making power of the traffic is vested in conservative hands, with no less responsibility than that devolving upon a trustee legally and honorably bound to protect the property of others.

COMPETITION.

"*Eighth (B)*—Of what section and what proportion of the population and productions of the State is your road, or system of roads, the only means of transportation?"

Answer—A glance at the map will show that this State is favored with water transportation not only on the seaboard, but also by the Sacramento and San Joaquin Rivers, which drain the two principal valleys of the State. The only sections for which our system of roads is the only means of transportation are in the extreme north and southeast and the mountain districts.

A statement is herewith appended showing the population of California, by the census of 1880, the acreage and assessed average value per acre in 1882, the mileage of the Central Pacific system of roads in each county, and the percentage of the whole population and whole acreage served by our roads.

From this it will appear that 666,000, or 77 per cent of the population, are in counties through which the roads run, and that over 17,000,000, or nearly 67 per cent of the whole acreage, are in these counties.

STATEMENT

Showing population of California in 1880; acreage and average assessed value per acre, 1882; Central Pacific and Southern Pacific railroad mileage, 1882; and percentage of whole population and whole acreage directly served:

FOURTH ANNUAL REPORT OF THE

COUNTIES.	Population— Census 1880.	No. Acres As- sessed, 1882.	Average Value per Acre, 1882.	Miles Operated by C. P. and S. P. R. R. Co's.
Alameda	62,976	416,821	\$26 36	91.77
Alpine	539	32,134	4 25	-----
Amador	11,384	200,402	4 42	8.00
Butte	18,721	669,826	10 62	45.00
Calaveras	9,094	230,211	4 21	0.66
Colusa	13,118	1,093,669	10 79	46.00
Contra Costa	12,525	455,391	11 03	59.85
Del Norte	2,584	66,562	4 40	-----
El Dorado	10,683	207,793	4 44	-----
Fresno	9,478	1,703,800	2 47	78.99
Humboldt	15,512	791,859	3 71	-----
Inyo	2,928	66,789	4 10	-----
Kern	5,601	1,117,421	1 80	117.83
Lake	6,596	200,608	5 25	-----
Lassen	3,340	132,180	3 81	-----
Los Angeles	33,381	1,334,251	5 78	142.48
Marin	11,324	320,574	12 07	-----
Mariposa	4,339	222,013	2 88	-----
Mendocino	12,800	774,512	3 78	-----
Merced	5,656	1,021,323	3 39	36.75
Modoc	4,399	207,713	2 39	-----
Mono	7,499	82,913	16 68	-----
Monterey	11,302	901,772	4 93	-----
Napa	13,235	326,229	11 76	41.00
Nevada	20,823	229,526	12 59	30.25
Placer	14,232	330,655	5 62	112.75
Plumas	6,180	213,068	3 93	-----
Sacramento	34,390	606,759	9 00	60.50
San Benito	5,584	312,178	7 38	-----
San Bernardino	7,786	416,766	3 84	54.60
San Diego	8,618	960,908	2 26	158.85
San Francisco	233,959	27,000	35 56	4.00
San Joaquin	24,349	866,835	17 56	98.06
San Luis Obispo	9,142	944,790	2 71	-----
San Mateo	8,669	290,531	13 15	-----
Santa Barbara	9,513	981,252	2 46	-----
Santa Clara	35,039	558,590	18 30	8.50
Santa Cruz	12,802	245,253	10 66	-----
Shasta	9,492	329,724	2 62	18.80
Sierra	6,623	84,136	8 83	2.15
Siskiyou	8,610	191,683	6 10	-----
Solano	18,475	501,429	13 09	56.75
Sonoma	25,926	753,525	11 58	-----
Stanislaus	8,751	763,507	8 96	33.79
Sutter	5,159	372,082	7 32	10.00
Tehama	9,301	898,712	4 17	40.54
Trinity	4,999	92,465	4 48	-----
Tulare	11,281	1,166,579	3 48	74.63
Tuolumne	7,848	192,837	3 31	-----
Ventura	5,073	455,743	3 78	-----
Yolo	11,772	556,157	13 92	51.75
Yuba	11,284	283,166	4 55	16.29

DEDUCTIONS.

Total population	864,694
Population of counties through which roads of Central Pacific and Southern Pacific Railroad Companies pass	666,503
Percentage of whole population directly served by Central Pacific and Southern Pacific Railroad Companies	77.1
Total acreage of State	26,252,622
Acreage of counties through which roads of Central Pacific and Southern Pacific Railroad Companies pass	17,571,875
Percentage of whole acreage directly served by Central Pacific and Southern Pacific Railroad Companies	66.9
Average assessed value of land per acre	\$6 88

LIST OF COMPETITIVE POINTS.

"Ninth (B)—At what points along its main line within this State does it meet with rival carriers by rail, river, or ocean, and for what percentage of its gross earnings does it compete with them?"

Answer—The Central Pacific Railroad and leased lines come into direct competition with other carriers, rail or water, at the following points, seventy-one in number:

San Francisco (Market Street).....	San Francisco Bay, Sacramento River and sloughs
Oakland Pier.....	San Francisco Bay, Sacramento River and sloughs
Oakland Wharf.....	San Francisco Bay, Sacramento River and sloughs
Stock Yards.....	San Francisco Bay, Sacramento River and sloughs
Standard Soap Company's switch.....	San Francisco Bay, Sacramento River and sloughs
Emerys.....	San Francisco Bay, Sacramento River and sloughs
Highland.....	San Francisco Bay, Sacramento River and sloughs
Point Isabel.....	San Francisco Bay, Sacramento River and sloughs
Stege.....	San Francisco Bay, Sacramento River and sloughs
Barrett.....	San Francisco Bay, Sacramento River and sloughs
San Pablo.....	San Francisco Bay, Sacramento River and sloughs
Flint.....	San Francisco Bay, Sacramento River and sloughs
Sobranste.....	San Francisco Bay, Sacramento River and sloughs
Pinole.....	San Francisco Bay, Sacramento River and sloughs
Powning.....	San Francisco Bay, Sacramento River and sloughs
Tormey.....	San Francisco Bay, Sacramento River and sloughs
Vallejo Junction.....	San Francisco Bay, Sacramento River and sloughs
Valona.....	San Francisco Bay, Sacramento River and sloughs
Crocketts.....	San Francisco Bay, Sacramento River and sloughs
Granger Siding.....	San Francisco Bay, Sacramento River and sloughs
Port Costa.....	San Francisco Bay, Sacramento River and sloughs
Martinez.....	San Francisco Bay, Sacramento River and sloughs
Avon.....	San Francisco Bay, Sacramento River and sloughs
Bay Point.....	San Francisco Bay, Sacramento River and sloughs
McAvoy.....	San Francisco Bay, Sacramento River and sloughs
Los Medanos.....	San Francisco Bay, Sacramento River and sloughs
Empire Railroad Crossing.....	San Francisco Bay, Sacramento River and sloughs
Antioch.....	San Francisco Bay, Sacramento River and sloughs
Cornwall.....	San Francisco Bay, Sacramento River and sloughs
West Oakland.....	San Francisco Bay and Oakland Creek
Oakland (Market Street).....	San Francisco Bay and Oakland Creek
Alameda Point.....	San Francisco Bay and South Pacific Coast Railroad
Bay Street.....	South Pacific Coast Railroad
Alameda.....	South Pacific Coast Railroad
Fernside.....	South Pacific Coast Railroad
East Oakland.....	South Pacific Coast Railroad
Park Street Crossing.....	South Pacific Coast Railroad
Fruit Vale.....	South Pacific Coast Railroad
Melrose.....	South Pacific Coast Railroad
Mitchell.....	South Pacific Coast Railroad
San Leandro.....	South Pacific Coast Railroad
Lorenzo.....	South Pacific Coast Railroad
Haywards.....	South Pacific Coast Railroad
Alvarado.....	South Pacific Coast Railroad
Decoto.....	South Pacific Coast Railroad
Niles.....	South Pacific Coast Railroad
Washington.....	South Pacific Coast Railroad
Warm Springs.....	South Pacific Coast Railroad
Milpitas.....	South Pacific Coast Railroad
Wayne.....	South Pacific Coast Railroad
San José.....	South Pacific Coast Railroad
Benicia.....	San Francisco Bay and Sacramento River
Suisun.....	Suisun Bay and San Francisco Bay
Army Point.....	Suisun Bay and San Francisco Bay
South Vallejo.....	San Francisco Bay
Thompson's.....	San Francisco Bay
Napa.....	Napa River
San Joaquin Bridge.....	San Joaquin River
Stockton.....	San Joaquin River

FOURTH ANNUAL REPORT OF THE

Lodi.....	S. N. and S. J. Railroad and Sacramento River
Sacramento.....	Sacramento River
Knight's Landing.....	Sacramento River
Marysville.....	Feather River
Tehama.....	Feather River
Chico.....	Sacramento River
Red Bluff.....	Sacramento River
Santa Monica.....	Pacific Ocean
San Pedro.....	Pacific Ocean
Wilmington.....	Wilmington Bay and Pacific Ocean
Colton.....	California Southern Railroad
Yuma.....	Colorado River and Pacific Ocean

At the following eighty-two points on the Central Pacific Railroad and leased lines rates are directly affected by reason of proximity to the competitive points named above, or by the law which requires that rates for short distances to intermediate points shall not exceed those to greater distances in the same direction within the State:

Brentwood.....	San Francisco Bay, Sacramento River, and sloughs
Byron.....	San Francisco Bay, Sacramento River, and sloughs
Bethany.....	San Francisco Bay, Sacramento River, and sloughs
Tracy.....	San Francisco Bay, Sacramento River, and sloughs
Goodyears.....	San Francisco and Suisun Bays
Teal.....	San Francisco and Suisun Bays
Napa Junction.....	Napa River
Middleton.....	Napa River
Banta.....	San Joaquin River
Lathrop.....	San Joaquin River
French Camp.....	San Joaquin River
Galt.....	S. N. and S. J. Railroad and Sacramento River
Acampo.....	S. N. and S. J. Railroad and Sacramento River
McConnells.....	Sacramento River
Elk Grove.....	Sacramento River
Florin.....	Sacramento River
Brighton.....	Sacramento River
Lomo.....	Feather River
Live Oak.....	Feather River
Gridley.....	Feather River
Biggs.....	Feather River
Nord.....	Sacramento River
Ceres.....	Sacramento River
Soto.....	Sacramento River
Vina.....	Sacramento River
Sesma.....	Sacramento River
Woodland.....	Sacramento River
Blacks.....	Sacramento River
Dunnigans.....	Sacramento River
Harrington.....	Sacramento River
Arbuckle.....	Sacramento River
Berlin.....	Sacramento River
Macy.....	Sacramento River
Willows.....	Sacramento River
Maxwell.....	Sacramento River
Delavan.....	Sacramento River
Logandale.....	Sacramento River
Willows.....	Sacramento River
Lyman.....	Sacramento River
Germantown.....	Sacramento River
Greenwood.....	Sacramento River
Orland.....	Sacramento River
Malton.....	Sacramento River
Kirkwood.....	Sacramento River
Corning.....	Sacramento River
Richfield.....	Sacramento River
Finnell.....	Sacramento River
Anaheim.....	Via Anaheim Landing and Pacific Ocean
Santa Ana.....	Via Anaheim Landing and Pacific Ocean

Los Angeles and all stations north thereof are affected by reason of the competition with ocean route from San Pedro as follows:

Sepulveda,	San Fernando,	Newhall,	Lang,	Ravenna,	Acton,
Alpine,	Lancaster,	Sand Creek,	Gloster,	Mojave,	Nadeau,
Cameron,	Tehachapi,	Girard,	Keene,	Bealville,	Caliente,
Pampa,	Sumner,	Lerdo,	Poso,	Delano,	Alila,
Tipton,	Tulare,	Huron,	Heinlen,	Lemoore,	Hanford.
Goshen,	Cross Creek,				

SPECIAL CONTRACTS.

"*Tenth* (B)—What are the alleged special contracts, or underbidding system of contracts at such competitive point or points, under which your company performs stipulated service for contracting shippers on terms not open to all rival shippers and carriers?"

Answer—There are no special contracts with local shippers; that is, on freight moved within the State.

The company is concerned in special contracts made by eastern roads with shippers who agree to use the overland lines, exclusively, as against the ocean routes; but no such contracts are made between points within this State.

"*Eleventh* (B)—State the average difference, if any, between contract and competitive rates for equivalent service at such points. A sample copy of such contract is requested."

Answer—Copies of overland contracts and of rates to contractors and non-contractors, herewith.

It is impossible to strike an average difference, but the rates show for themselves.

"*Twelfth* (B)—Approximate the average difference between such special rates at such points and schedule rates at non-competitive points."

NOTE.—The replies to Nos. ten and eleven.

AVERAGE RATES OF FREIGHT PER MILE IN 1881.

"*Thirteenth* (B)—From a comparative estimate, what are the relative average rates of through and local freights?"

Answer—This query cannot be answered for the year 1882, as tonnage statistics cannot be compiled till about May first.

In 1881 the average rate per ton per mile on through freight was 1.667 cents, and on local freight, 3.215 cents.

"*Fourteenth* (B)—When and why are both collected, if at all, on through shipments to and from non-competitive points?"

Answer—This is not done. Non-competitive points are given the benefit of lowest through rates to nearest competitive point, in proportion to their proximity to such points, when this is lower than local rates between eastern cities and such non-competitive points.

"*Fifteenth* (B)—What is the total income for the year ending December 31, 1882, of your road in California, from local freights on through shipments?"

NOTE.—As explained in preceding answer, no such charges were made.

JOINT EARNINGS.

"*Sixteenth* (B)—What share of joint earnings from through freights,

pro rata with its overland connections, is received by your road in California?"

Answer—Earnings by our road in California on through freights, pro rata with overland connections, were as follows, being less than thirty-nine per cent of the whole.

West-bound through freights:

	California Proportion of Charges.	Total Central Pa- cific Proportion of Through Charges.
Via Union Pacific.....	\$633,044 22	\$2,009,630 80
Via Atchison and Topeka.....	158,742 75	294,533 98
Via Texas Pacific.....	50,685 58	93,656 61
Total.....	\$842,472 55	\$2,397,830 39

East-bound through freights:

	California Proportion of Charges.	Total Central Pa- cific Proportion of Through Charges.
Via Union Pacific.....	\$220,897 43	\$728,037 48
Via Atchison and Topeka.....	210,667 98	360,407 99
Via Texas Pacific.....	266,041 97	475,829 55
Total.....	\$697,607 48	\$1,564,275 02
Grand Total.....	\$1,540,079 93	\$3,961,275 41

"Seventeenth (B)—What, for the year last mentioned, were its total earnings from freights of all classes?"

Answer—\$16,302,882 72.

"Eighteenth (B)—What, for the same year, were its total operating expenses of the freight department?"

Answer—This query, with numbers 22, 23, 24, 25, and 26, which are all of the same nature, cannot be answered by this or any railroad company doing freight and passenger traffic on the same line of rails.

It is admitted by the best railroad accountants that any estimate or system of division of each class of traffic made for such a road would be only approximate, and might be very far from correct.

The truth of this will be apparent when we remember that the volume, direction, and condition of movements of freight (all of which affect the cost), are constantly fluctuating; and the same is true, though in a more limited sense, of passenger business, the lower classes of which are sometimes hauled in mixed trains.

The company does not attempt to segregate the cost of each class of traffic, and therefore cannot give the percentages of expenses in each department.

RELATIVE COST OF SERVICE.

"Nineteenth (B)—How far does the relative cost of service in the freight and passenger departments of your road control the rates of charges for fares and freights?"

Answer—The relative cost of service being unknown (see answer to queries Nos. 19, 22, 23, 24, 25, and 26), it follows that other consid-

erations must control the rates of charges for fares and freights. To show all these would be to enter a broad and important field of political economy too wide for the limits of this extended communication. It is a subject, however, which I shall be pleased to discuss further with you at some future time, and which I trust will receive, as it deserves, your careful study.

•
PASSENGER RATES PER MILE.

"*Twentieth* (B)—What are the maximum and minimum and average rates per mile for through passengers on your road in this State?"

Answer—Presuming that this question refers to overland traffic, which has always been designated as "through," maximum is 5.2 cents per mile; minimum is 1.6 cents per mile. The average rate of fare per mile cannot be given, excepting that we may be allowed to quote our general average rate per mile for our whole system during the year 1881; *i. e.*, 3.06.

"*Twenty-first* (B)—The same for local passengers, excluding fares of Oakland ferry?"

Answer—The local rates in this State, excluding fares of the Oakland ferries, are, maximum, 10 cents; minimum, 1.4 cents.

The average rate per mile for 1882 cannot now be given; but for the year 1881, we find it was 3.94 cents per mile, while including the Oakland ferry traffic for the same year, it was 2.68 cents.

"*Twenty-second* (B)—What is the percentage of expense to earnings from each class of passengers, and percentage of net income from each to total operating expenses incurred for both?"

Answer—Refer to "answer" given for eighteenth question.

"*Twenty-third* (B)—Percentage of expenses to earnings in passenger department?"

Answer—Refer to "answer" given for eighteenth question.

"*Twenty-fourth* (B)—Percentage of expenses to earnings in freight department?"

Answer—Refer to "answer" given for eighteenth question.

"*Twenty-fifth* (B)—Percentage of total expense to total earnings in both departments?"

Answer—Refer to "answer" given for eighteenth question.

"*Twenty-sixth* (B)—Percentage of net income in each to total net earnings in both?"

Answer—Refer to "answer" given for eighteenth question.

FURTHER INFORMATION WANTED.

Severe illness having greatly interfered recently with the prosecution of my official duties, I regret that I could not have given more of my personal attention to the matter embraced in these questions. A desire to comply with the Board's wishes, for presentation of the answers at the next meeting, might be offered as further apology for any possible omissions or apparent incompleteness of requested information.

At the same time, I will add, that any additional queries it may be the pleasure of your honorable Board to make, will receive prompt attention by,

Very respectfully,

A. N. TOWNE, General Manager.

APRIL 16, 1883.

To the honorable Board of State Railroad Commissioners:

GENTLEMEN: May I take the liberty of referring your honorable Board to a communication under date of February twentieth last, from our General Manager, A. N. Towne, answering certain questions embraced in Circular No. 2, adopted and issued February 5, 1883. Wishing to state, that being now able so to do, we desire to give more explicit answers to the following numbers:

"*Twentieth* (B) page 35—What are the average rates per mile for through passengers for 1882?"

Answer—Average number of miles traveled by each passenger, 33.27; average charge per mile per passenger, in cents, 2.92.

"*Twenty-first* (B)—The same for local passengers for 1882?"

Answer—Local travel in this State, including ferries. Total number of passengers, 7,366,525; total miles, 124,809,648; total earnings, \$3,189,399 74; average number of miles traveled by each passenger, 16.94; average charge per mile per passenger, in cents, 2.56.

Same, excluding fares of the Oakland ferries: Total number of passengers, 1,471,366; total miles, 70,206,844; total earnings, \$2,613,165 79; average number of miles traveled by each passenger, 47.72; average charge per mile per passenger, in cents, 3.72.

The above figures show percentages of decrease in fares received during 1882, as compared with similar receipts for 1881, as follows: For whole system of roads, 4.6 per cent; for the State, 4.5 per cent; for latter, excluding ferries, 5.6 per cent.

Very respectfully, your obedient servant,

T. H. GOODMAN, G. P. and T. Agent.

APPENDIX B.

To the honorable the Board of Railroad Commissioners of the State of California:

GENTLEMEN: On behalf of the Central Pacific Railroad Company I have the honor to acknowledge the receipt of a copy of the order adopted by your honorable body on the twenty-sixth day of June, ultimo, prescribing the rates of passenger fares on the system of railroads owned and leased by it.

The order establishes a maximum of six cents per mile on the desert and mountain portions of the system, and four cents per mile in the valley districts, and adopts all lower rates now charged by us.

This official order works many radical changes in the rates of passenger transportation, and we respectfully enter this our solemn protest against its enforcement, and for grounds of protest beg leave to respectfully submit the following:

GROUNDS OF PROTEST.

First—The State of California, neither through its Legislature nor through you, its Board of Railroad Commissioners, has jurisdiction to regulate fares and freights upon either the Central or Southern Pacific Railroad. Both of these roads, as you are aware, have been constructed under Acts of Congress—the former under the Act of Congress of July 1, 1862, in relation to the Union and Central Pacific Railroads—the latter under two Acts of Congress, to wit: the Atlantic and Pacific Railroad Act of July 27, 1866, and the Act in relation to the Texas and Pacific Railway Company of March 3, 1871. By the eighteenth section of the first of said Acts Congress reserved to itself the power to regulate fares and freights upon the Central Pacific Railroad, after the income of said road should exceed ten per cent upon the cost of its construction, exclusive of the five per centum required to be paid by the company to the United States in liquidation of the loans made by the United States to it, and in the meantime authorized the company to establish its own rates.

By the thirteenth section of the second of said Acts it was provided that the Directors of the Southern Pacific Railroad Company might, from time to time, fix, determine, and regulate the fares, tolls, and charges to be received and paid for transportation of persons and property on its road or any part thereof.

The fifteenth section of the third and last of said Acts provided that the rates charged for carrying passengers and freight per mile shall not exceed prices which might be fixed by Congress for carrying passengers and freight on the Union Pacific and Central Pacific Railroads; and, by the nineteenth section thereof, it was further provided that no act of the company, nor any law of any State or Territory, should impede, delay, or prevent the company from performing its obligations to the United States.

JURISDICTION RESERVED BY CONGRESS.

Thus it appears that Congress has reserved to itself full and complete jurisdiction over the regulation of fares and freights, upon both the roads in question, and has already, in a measure, exercised such jurisdiction. To this jurisdiction, on the part of the National Government, the State of California, by solemn Acts of its legislative body, has fully assented, if such assent was necessary, which we deny.

Said Acts were directed by a wise policy on the part of Congress. The purpose of Congress, in the passage of said Acts, was to promote the settlement and development of the country, and to stimulate and encourage the construction of lines of communication between all parts of the national domain.

The action proposed by you, and against which we protest, is at variance with this broader policy of the National Government; indeed, it will prove, if enforced, the reversal of that policy, by arresting the construction of transportation lines, and thereby retarding the development of the national resources, and delaying the progress of civilization.

Second—The rates proposed to be established by this order will supplant and nullify schedules for passenger transportation, in all respects just and reasonable to the public and equitable to our roads.

Third—The order is an unlawful interference with that liberty of action which all enlightened governments are bound to accord to their citizens.

Fourth—The rates established by us, and which the enforcement of the order will modify and supplant, do not constitute an abuse calling for remedy by the interposition of the legislative, executive, or judicial function, alleged by some persons, but denied by others, to be vested in your honorable body.

Fifth—The rates established by us, and proposed to be abolished by your order, were produced by the natural reciprocal relation of the lower with the higher rates subsisting, and in force upon the various portions of our railroad system.

Sixth—It is undeniable that the standard from which the reductions of maximum rates were made by you was that adopted by us. But, in utter disregard of the reasons influencing the establishment of maximum rates and the relation of minimum rates thereto, you have reduced the maximum without permitting an increase of the minimum rates, with which such maximum rates were correlated, when the scale of rates were established by us.

THE SWEEPING SCHEDULE.

Seventh—We further protest, on the general grounds, that there is no well founded justification for reductions, which, in the language of one of the members of your honorable body, "are probably the most sweeping ever made by one schedule in any State," and because the order is largely due to uninformed and unreasoning clamor on the part of persons absolutely ignorant of the equitable principles upon which transportation services should be rendered.

Eighth—We further protest, because, during the investigations and proceedings which have culminated in the order in question, undue

weight has been given to the oft-repeated misrepresentation that the roads singled out for regulation were constructed at the public expense, while, in fact, every one at all familiar with the legislative history of the country well knows that they were constructed under contracts made between their builders and the United States, at the earnest solicitation and with the eager and unqualified approbation of the State of California.

Ninth—We further protest, because your tribunal—judicial, legislative, and executive in its character—uniting, therefore, those powers which modern Statesmanship has wisely assigned to separate departments of government, in respect to all citizens, except such as are engaged in the business of transportation—has been made the forum of unchallenged and unrebuked falsifications and disgraceful attempts at coercion.

OBSERVERS OF THE AGITATION.

Of the "agitation" which has preceded the definite action of your Commission, we have been careful observers. We have noted the varied and ingenious agencies which have been active in influencing the conclusions to be reached by your honorable Board. County committees have assumed to dictate to you the exact manner in which the functions of your office should be performed. Preambles and resolutions, prepared and adopted without regard to law or logic, but always denunciatory of "recreant Commissioners," have been formulated by aspiring place-hunters, and given prominence in the columns of a press under the influence or control of selfish schemers, whose only desire has been or is to promote individual aggrandizement.

Public meetings have been called, which, in view of the number and character of the persons present, were a rebuke to their promoters. An unprincipled and communistic press exaggerated the importance of these gatherings and industriously magnified the numbers in attendance.

The county committees and public meetings have represented to the Chief Executive of the State that members of your Commission should be impeached, and have demanded of his Excellency that he should forthwith convene the Legislature in special session that the trial might proceed without delay. The halter and the stake, border ruffianism, and mob violence have been threatened by those whose sworn duty it is to administer and uphold the law. Members of the Legislature, forgetting that they might be called to sit as impartial judges on such a possible trial, have shown an indecent haste to record their verdict and to pronounce their judgment long in advance of a hearing.

EFFORTS AT COERCION.

You, as Commissioners, have essayed to perform the functions of your high and responsible office in the midst of these turbulent and unseemly proceedings. You have attempted to investigate the most important and intricate question that can tax the ingenuity of man while experiencing these disgraceful efforts at coercion. In your very Court-room, and while in session, you have been called upon to administer equity—according to their notions of equity—by the advocates of mob law, by the violators of law and decency.

We submit that it is impossible for any public officer to hold the scales of justice even when surrounded by circumstances, conditions, and influences such as these.

It has been our constant aim so to conduct our business as to be at peace with the patrons of our lines. Any one brought into business relations with us having a grievance, real or fancied, has always been able to obtain a patient hearing and prompt redress, if redress comported with business principles. That we have been reasonably successful in establishing good relations with the great body of our patrons is proved by their non-participation in the coercive efforts which, we insist, have influenced the judgment and determination of your Commission. The representative merchants, manufacturers, laborers, skilled and unskilled, as we believe, have taken no part in the agitation by which designing persons have attempted to make outlaws of a majority of your Commission.

BRANCH LINES TO RICH VALLEYS.

It is well known that it has been our purpose to construct branch lines into some of the rich valleys of the State, into which, as yet, no railway has penetrated, and which are, therefore, comparatively isolated, for the want of transportation facilities. Indeed, in some cases, our intentions have been partially executed. Napa County merits an increase of railway mileage, by which Lake County, also, would be greatly benefited. The time and expense now required for a visit to Yosemite can and ought to be lessened, but this can be done only by railway construction. The extensive valley of the San Joaquin is inadequately provided with railway advantages. An extension of the line from Soledad southerly through the Counties of San Luis Obispo, Santa Barbara, and Ventura, as soon as trunk lines are completed, would vastly improve those sections of the State, and speedily quadruple the population and taxable property thereof.

These and other branch lines have had the earnest consideration of the builders of the Central and Southern Pacific roads, and for some of them lines have been surveyed; and in respect to others, more advanced preparations have been made for their early construction.

All these projects must now be abandoned, or postponed, until those who are invested by the Constitution with the power to regulate our affairs, are allowed by all persons to exercise the functions of their office without fear of political ostracism.

We are not now, nor have we ever been, apprehensive of serious evil from an enlightened, unprejudiced, and untrammelled Commission.

All of which is respectfully submitted.

A. N. TOWNE,

General Manager Central Pacific Railroad and leased lines.

APPENDIX C.

JULY 6, 1883.

To the honorable the Board of Railroad Commissioners, State of California:

SIRS: In response to your order of the twenty-ninth of June, the Central Pacific Railroad Company, by its Freight Traffic Manager and General Freight Agent, appeared before your honorable Board on the twenty-seventh ultimo to protest against the action contemplated by your Commission in the matter of reducing the freight rates of this company.

It now begs to submit, in writing, the reasons given at said interview, with additional arguments against said action.

It respectfully urges upon your Commission that the spirit and purpose of the organization of a State Board of Railroad Commissioners was to remove the question of regulation of freights and fares from the stump of political campaigns—taking it out of politics, from being forced upon the overburdened Legislature, whose time, knowledge, and experience did not qualify it to deal with the subject, and refer it to the thoughtful consideration of a Board which should study the question with disinterested motives, and act upon exact knowledge, or from data gathered from the many sources of information which the vast railroad system of the nation and the experience of kindred bodies in other States and countries made available to thorough inquiry and research.

JUDICIAL FAIRNESS INVOKED.

It submits that the individual members of your Commission are bound by their oaths to deal with this subject with judicial fairness; that they should have equal regard to both sides of the controversy, acting with caution and from an intelligent consideration of all the facts and interests involved. It submits that such a thing as a candidate for a place on your honorable Board being pledged in advance of election to a reduction of freights and fares before he could have had information, knowledge, or experience to qualify him to speak to the question at all, was never contemplated by the framers of the Constitution, much less by the people whose votes adopted that instrument.

It asserts that the agitation of the question by a portion of the press is for political effect, to serve the personal ends of men scheming for place, and it finds its only support in an exaggerated public opinion, manufactured by persistent misstatement and gross misrepresentation—misrepresentation which your honorable body can, and in the judgment of the company, should correct, if not for the protection of the vast transportation interests committed to its charge by the Constitution, for the protection of the people from demagogism, than which nothing can be more demoralizing to enlightened citizenship, or dangerous to free institutions.

For example, see the following clipping from a morning paper:

A CASE IN POINT.

Concerning the question of railroad discrimination, a correspondent at Santa Ana, Los Angeles County, furnishes the Examiner an item of news to which we call the attention of the Railroad Commissioners:

To the Editor of the Examiner :

SIR: This town is distant from Los Angeles thirty-three and one third miles. The railroad company charges for a *carload of hay* from here to Los Angeles seven dollars; from Los Angeles to this place for a carload of hay twenty dollars. Can you explain the justice and reason for this *discrimination*? Can our Railroad Commissioners furnish a reasonable solution of the question?

SANTA ANA, July 2d.

The charge for a carload of hay between Santa Ana and Los Angeles is fifteen dollars in either direction. The only foundation for the misstatement is found in the fact that the difference between the rates from Los Angeles and Santa Ana respectively to Arizona points is seven dollars per carload.

Denial by the carrier of such misstatements will have little effect on public opinion. Inquiry and correction, according to the facts, by your Commission, would soon end malevolent charges of this character with a beneficent effect upon society.

The company does not presume to gauge the influence which public agitation has had in determining the proposed action of your honorable Board. It would, however, respectfully urge that the demand of a few, or all in a community, is not a sufficient ground for the Commission's action. It should first determine whether such demand is right. It has no moral or legal prerogative to experiment. Tentative movements of this character are opposed to public and private rights, a perversion of the powers which have been delegated to your honorable Board in the name of the people. Hasty, ill advised action, the behest of so called party managers, is inconsistent with the dignity of a Board whose origin is found in public ignorance of the transportation question and a professed unwillingness upon the part of public servants to act without due inquiry, lest injustice might result to the people or to the carrier.

The question arising here is whether the members of this Commission, taking office but six months ago, have so informed themselves upon the subjects as to say under their oaths of office that the rates of freight now charged and collected by this company are unreasonable or unjust.

The company protests that the charges for its services are fair and reasonable, judged by any proper standard; that an enlightened public policy does not justify interference with its tariffs; that the growth of the State, the advancement of its material interests, the present condition of its industries as compared with older communities nearer the great markets of the world, all testify against the malicious assertions of those who charge upon the company a grasping, grinding policy, necessitating governmental regulation and control.

THE AVERAGE CHARGE FOR FREIGHT.

The average charge for freight which was both taken up and laid down within the State of California during the year 1882, was at a rate of but two and nine tenths ($2\frac{9}{10}$) cents per ton per mile, notwith-

standing the legal maximum of fifteen cents per ton per mile. The average length of haul was only one hundred and five miles. This average rate includes all the short hauls, the mountain service on the Sierra Nevadas, the Tehachapi and Coast Range, and the service across the Mojave and Colorado Deserts. It excludes all material for company's use, which, if included at a rate equal to the estimated cost of service, as is the custom with most railroad companies in exhibits of this character, would materially reduce the average. This point should not be overlooked in comparison with exhibits of other railroads. It excludes all freight interchanged with other States and Territories on the Pacific Coast, and also all through freight interchanged with the States east of the Rocky Mountains.

The result of the policy pursued by a railroad company in its effect upon the communities it serves, or even upon its own revenues, can only be exhibited by yearly averages, and often a more extended period is necessary to a proper test. This, doubtless, is true in the case of the Central Pacific Railroad and dependencies to a greater degree than with other railroads in this country. No other system of roads in one State presents such varied physical characteristics as does the Central Pacific in California. Such a combination of valley, mountain, and desert road can nowhere else be found. This necessitates a complicated classification of service and charges with respect to the character of the road, which, together with the classification of freight with respect to its bulk, value, and influence upon the general prosperity of the community, as a whole, makes uniformity of charges impossible and the average rate the most approximate index to the correctness of the tariff.

The company, therefore, submits the fact that its average charge for the transportation of freights wholly within the State of California, during 1882, being but two and nine tenths ($2\frac{9}{10}$) cents per ton per mile—less than one fifth of the maximum allowed by law—is indubitable evidence that the charges are reasonable and should not in any particular be disturbed.

THE TENDENCY OF RATES DOWNWARD.

It submits, further, as evidence that the tendency of freights is downward, calling for no interference by the State, the statement that the average charge for freight service wholly within the State of California has been, during the past five (5) years, as follows:

During 1878, 3.7 cents per ton per mile.
During 1879, 3.6 cents per ton per mile.
During 1880, $3\frac{1}{2}$ cents per ton per mile.
During 1881, 3.1 cents per ton per mile.
During 1882, 2.9 cents per ton per mile.

The company further protests against the proposed action as unjustly discriminative. It is generally understood to be directed wholly against the Central Pacific Railroad and leased lines. Short independent lines, operated, as alleged by their managers, without profit, are to be exempted from the contemplated action of the Commission. It might be made to appear that such action was not designed to reward bad judgment and incapacity on the part of the projectors and managers of the non-paying railroads, but to punish sagacity and good management, to which, ordinarily, the success of

a paying enterprise is largely owing. California needs many more branch lines, yet, by such action the State, through its Railroad Commissioners, says to the would-be investors: "If you build these roads and the investment proves good, we shall arbitrarily reduce your charges, so as to equalize the income and outgo."

If the North Pacific Coast Railroad Company, the California Southern Railroad Company, and others, are to be favored by no interference upon the part of your honorable Commission, on the ground of the smallness and the unremunerative nature of their traffic, upon what considerations of justice can a different policy be pursued toward the several integral parts of the Central Pacific system, which could not be operated independently, and preserve the same facilities and service to the public, which, by themselves considered, do not yield a reasonable revenue? These parts of the Central Pacific system are distinct corporations, having distinct and separate obligations, and it is respectfully submitted that they are entitled to distinct and separate considerations, apart from their connection with the Central Pacific; that upon the grounds upon which it is proposed to exclude roads which are independent of the Central Pacific from the reductions contemplated by the Commission, those small roads leased to the Central Pacific are entitled to claim the right to charge such rates as will yield a fair profit upon the investment.

SPECIFIC OBJECTIONS TO REDUCTION.

For specific objections to the reductions proposed, the company respectfully urges against that for moving grain from interior points to tide-water:

First—There is no general or well founded complaint against the rates charged for this service.

Second—A reduction ranging from seven (7) per cent on the low rates, for the short hauls from bay points, to thirty-three and one third (33 $\frac{1}{3}$) per cent on the rates from the upper Sacramento Valley, and from twenty-seven (27) to thirty (30) per cent on the rates from the upper San Joaquin Valley, was made at the instance of your predecessors, taking effect on, and continuing in force since, the first day of June, 1881. A further reduction could not but be regarded by fair-minded men as unreasonable and unjust, savoring of a desire to cripple the railroad company, rather than to enforce equal and just tariffs.

Third—The grain rates, as modified in the manner above explained, are not burdensome to the producer. They rather contribute largely towards making the production of grain in California more profitable to him than it is in any of the great grain fields west of the Mississippi River, and east of the Rocky Mountains. In support of this, your Commission is respectfully referred to the exhibits filed with it on the twenty-seventh ultimo, one of which compares the grain rates of this company to Port Costa—now the principal grain depot for export—from all points, beginning with Martinez (distant three and four tenths miles), and running south to Santa Ana (distant four hundred and eighty-three miles), with rates for like distances charged by the Texas and Pacific Railway to New Orleans, the Missouri Pacific Railway to St. Louis, the Chicago, Milwaukee, and St. Paul Railway to Milwaukee, and the Chicago and Northwestern Railway to Chicago.

THE AVERAGE PER TON PER MILE.

The average per ton per mile of the rates charged, based upon equality of tonnage for all points, is as follows:

Central Pacific.....	1.66 cents
Texas and Pacific.....	2.40 cents
Missouri Pacific.....	2.37 cents
St. Louis and San Francisco.....	2.10 cents
Chicago, Milwaukee, and St. Paul.....	2.10 cents
Chicago and Northwestern.....	1.40 cents

The lowest average of the eastern roads named is that of the Chicago and Northwestern Railway, one of the leading railroads of the great Northwest, whose mileage is about equal to that of the Central Pacific system, and whose gross tonnage, per mile operated, during the year 1882, was two thousand five hundred and twenty tons (according to Poor's Manual), against one thousand and eighteen and one half tons, per mile operated, carried by the Central Pacific system; yet the average charge for grain by the Chicago and Northwestern Railway is one and eight tenths cents per ton per mile, against one and sixty-six one hundredths cents per ton per mile, the average of the Central Pacific.

Another compares the grain rates of the Central Pacific to Port Costa from all points, beginning at Goodyears (six and seventy-seven one hundredths miles distant), and running, via the California Pacific and northern roads, to Tehama, in the upper Sacramento Valley (distant one hundred and fifty-five miles), with rates charged for like distances to Milwaukee by the Chicago, Milwaukee, and St. Paul Railway, another of the great railroads of the Northwest. On bases of equality of tonnage from all points, the average charge in cents per ton per mile of the Central Pacific compares, with that of the Chicago, Milwaukee, and St. Paul as two and fifty-one one hundredths is to three and forty-two one hundredths, the eastern road charging an average of thirty-six per cent more than the Central Pacific.

Another exhibit shows the average grain rate of the Central Pacific to Port Costa, from stations between Goodyears and Willows, to compare with the average of the Chicago and Northwestern Railway for like distances in Illinois, to Chicago, as two and seventy-three one hundredths cents is to three and three one hundredths cents per ton per mile, the eastern charge being higher by nine and eighty-nine one hundredths per cent than that of the California road.

THE STANDARDS OF EASTERN ROADS.

The other exhibits filed at the same time, and which compare rates from the Sacramento Valley, speak for themselves. They make a no less favorable showing for the Central Pacific; and, if charges by eastern roads are just standards by which to regulate the charge in California, they show conclusively that further involuntary reductions in the grain rates of this company would outrage justice.

This company, however, does not admit, nor will your honorable Board be likely to regard the rates charged by eastern railroads as fair criterions by which to judge the charges of the Central Pacific. The managers of the eastern roads themselves acknowledge the

greater cost of service here, and in through business, in which they are joined with the Central Pacific, allow the latter a greater rate per mile than their own companies receive. The cost of labor, fuel, and all supplies which are used in operating a road, is greater here than in the East. The physical characteristics of the road are more varied and difficult; the traffic is very much lighter; every element of cost or economy is against the California, and in favor of the eastern road.

It requires no expert knowledge to discover this. It ought not to require a protest from this company to secure proper consideration of the fact by the public and your honorable Board. In the matter of handling grain, the Central Pacific's service is greater and more expensive than that of eastern roads. The rates of the Central Pacific include unloading at tide-water and delivery at ship's side, if vessel is ready for grain; or, if not ready, delivery at pile on wharf, or in warehouse. The grain is handled in sacks, is housed at forwarding stations only to a limited degree, being largely "corraled," or piled, without shelter, alongside the track. This requires it to be moved before the early rains, demanding of the railroad company such attention and expedition as to not infrequently compel neglect of other traffic; while, as a rule, the cars are sent empty after the load, thus doubling the car mileage for one load.

GRAIN SHIPMENTS IN THE EAST.

By eastern roads the grain is uniformly handled in bulk. It is universally housed after harvest, and is moved only as the market is favorable, or the necessities of the farmer require. In loading it usually passes through an elevator, being shot into the cars at such a rate that a full train can be loaded and moved while one car is being loaded in California. At the various termini it is discharged into elevators, a car being emptied in something less than one minute. The economy permissible in the use of rolling stock by this rapid loading and discharging of cars is very marked. Cars have made two round trips in one day between Aurora and Chicago, Illinois, a distance of about fifty miles, a thing impossible here under four days. According to this, the California road would be required to at least quadruple the rolling stock employed by the Illinois road to handle the same tonnage a like distance. Moreover, the return traffic on eastern roads, in coal, lumber, etc., used in the interior, nearly balances the outward tonnage of cereals and produce, giving full loads in both directions. Within a few weeks the writer was informed by Mr. Midgley, the Commissioner of the Iowa Trunk Line Association, that, latterly, the east and west tonnage of the lines he represented nearly balanced, and he looked for equality within a short time.

From the foregoing the company argues that any reduction in grain rates is indefensible. It is aimed at that portion of the traffic which, in acknowledgment of the principle that by fostering production it promotes its own interests, it has, with the prescience of trained judgment, treated with unexampled liberality.

CLASSIFICATION OF TRAFFIC.

With respect to the proposed reduction on grain for seeding and feeding purposes going to the interior to the level of rates for outward

grain, the company would, in addition to the general protest against any reductions whatever, urge that the principle which the Commission would set up in this case, namely: that rates for the same class of goods should be the same for like distances, regardless of direction, is erroneous. Classification of traffic for the purpose of rating charges thereon is necessary and universal. It has not become universal by the election of the carriers; the laws of trade have forced it. If possible, an average rate upon all goods would be adopted by every carrier: its effect in simplifying and economizing the conduct of transportation can hardly be measured. This classification must be had, not only with respect to different values, bulk, weight, frangibility, etc., but also to volume, direction, and competition. For example, manufactured cottons from the mills of the South to the North, are rated materially lower than from the mills of New England to the South, the difference ranging from forty-five to forty-seven per cent; this in spite of the fact that the raw material must first go from the South to New England in order to be milled and returned. Raisins, before becoming an important California product were, and even now are, brought from the East for from two to three cents per pound. They are sent from California to the East at one and one half cents per pound. Examples might be multiplied. Fifty cents per ton upon the product of his ranch amounts to considerable to the California farmer, very much more than five times that rate would equal on the small amount of seed wheat he should want from another section.

MINIMUM AND MAXIMUM RATES.

The design of classification is to place the higher charges where they will not be felt, at least not be burdensome to the consumer. All freight cannot be handled at the minimum rate—some must pay the maximum. If the maximum is reduced, or considerable tonnage taken from the intermediate classes and rated with the lowest, then the minimum must be increased. So much for the principle.

It must be admitted that wheat is wheat, whether going in or out of the country, but its value is not the same, and the difference in volume is very wide.

The company must earnestly protest against the introduction of any such principle of rating as this proposition of the Commissioners involves. It is destructive of the fundamental principles of tariffs.

The present rate on grain to the interior works no hardship to the public. The proposed action of the Commission will have no appreciable influence upon the State's prosperity. It is a concession to ignorance. It is suggested by comparison. The complaint stands not that the maximum charge of \$8 05 per ton of 2,000 pounds for carrying grain to the interior is too high *per se*, but because the maximum charge in the other direction is but \$5 50. Adopt the principle and apply it wherever it has equal force, and you will destroy classification. Destroy classification, and you will ruin either the community served by the carriers or the carriers themselves.

The rates on live stock in carloads, and on wool, in both carloads and smaller quantities, should not be disturbed, for the reason that, at the instance of your predecessors in office, general and material reductions were made in the rates on these articles, which reduced rates, taking effect June 1, 1881, have since continued and are now in force.

By reference to a table published by the Railroad Commission, May 11, 1881, it will be observed that these reductions ranged from two per cent to over fifty per cent, as a rule, the larger reductions being made in the highest rates for the longer hauls.

TRANSPORTATION OF LIVE STOCK.

The rule for charging for the transportation of live stock, in less than carloads, is to rate one animal as one ton; two animals as one and three quarter tons; three animals as two and one half tons, and each additional animal as one half ton of first class freight, and so on until the charge for the lot equals the charge for a carload, that being the maximum for any number of animals in one car.

This system of rating favors the live stock as compared with ordinary freight. One animal occupies more space than one ton of freight. Indeed, it requires nearly half a car. Economy or convenience cannot be respected in stowing the animals. Regard must be had to their temper and condition. If laid out by any accident on the road they must be fed and watered. Jars, jolts, and accidents, harmless to ordinary freight, are dangerous to them. They are liable to injure themselves and each other, and to damage goods, if any be loaded in same car. The company seeks to absolve itself from responsibility for injuries from some of these causes by requiring the shipper to provide an attendant; but this, in the case of less than carloads, is evaded, and the company has yet found no means to enforce its rule in this regard.

Though transportation is its business, and its capacity is not half taxed, the company would gladly surrender its revenues derived from transporting live stock, in less than carload quantities, to be relieved from the obligation—if it is under any—of handling it.

The carrier performs no service relatively so cheap.

GENERAL PROTEST REPEATED.

With respect to the other changes proposed, the company respectfully repeats its general protest. The question cannot have had that calm deliberation proceeding from careful analysis and diligent research necessary to determine judgment. What evidence has been offered that the charges of the Central Pacific Railroad Company are onerous and exacting?

What inquiry has been made as to whether arbitrary reductions of its revenues will not cripple the company, cause it to default in its interest, compel discontinuance of dividends, and make the discharge of its obligations to the General Government impossible? Can reflecting men believe, for a moment, that the State, through the exercise of arbitrary power, can injure the very backbone of its commercial life and the commonwealth remain unscathed?

Common prudence dictates deliberation and investigation before action upon the part of your Commission. The very means being employed to force hasty and ill-advised action upon the part of the Commission should induce reflection and hesitation. A high minded, honorable man, cool and dispassionate though he may be, may well distrust his judgment under such a pressure as some are endeavoring to bring to bear on your honorable Board.

The Central Pacific Company does not fear the tests which a careful inquiry and just comparisons will make of its policy with respect to freights, but it solemnly protests against reductions inspired by political influences, and all interference with its tariffs which does not proceed from due consideration of the private as well as the public interests involved.

Very respectfully,

A. N. TOWNE,
General Manager.

By J. C. STUBBS, Freight Traffic Manager Central Pacific Railroad Company.

APPENDIX D.

The Pacific Coast Steamship Company vs. The Board of Railroad Commissioners.

In the Circuit Court of the United States, Ninth Circuit, District of California.

Before Field, Circuit Justice, and Sawyer, Circuit Judge.

The plaintiff is a corporation formed under the laws of California, for the transaction of the business of a steamship company on the Pacific Coast, and in its bays and harbors, and on the Pacific Ocean. It is the owner of a large number of steamships engaged in the coasting trade, making voyages along the Pacific Coast from San Francisco in California, to Astoria and Portland, in Oregon; to ports on Puget Sound, in Washington Territory, and to ports in British Columbia, and from San Francisco to San Diego, in California, touching at intermediate ports on the coast.

All the steamships in making their voyages navigate the Pacific Ocean more than a marine league from the shore. They carry goods sent from Europe, Asia, and States east of the Rocky Mountains, upon through bills of lading via San Francisco. Some of the goods are transferred to the vessels in the original unbroken packages, and some after the packages have been opened. Passengers, with and without through tickets from other States and from Europe, are carried on the steamships north and south from San Francisco. Passengers and freight are also carried in these vessels from ports in California to other ports in the State. All the vessels are enrolled and licensed to carry on the coasting trade under the Acts of Congress.

By the Constitution of California, adopted in 1879, all railroad, canal, and other transportation companies, are declared to be common carriers and subject to legislative control. Provision is also made for the election of three persons called Railroad Commissioners, who are invested with the power, and it is made their duty, to establish rates of charges for transportation of passengers and freight by such companies, and publish the same from time to time; to examine their books, records, and papers; to hear and determine complaints against them; to punish for contempt of the orders and processes of the Commissioners, and enforce their decisions; and to provide a uniform system of accounts to be kept by the companies.

The complaint in this case is that the defendants, the Commissioners, elected under these provisions of the Constitution, intend and threaten to establish rates of charges for passengers and freights on the steamships of the plaintiff engaged in the coasting trade as mentioned, and exercise with respect to them all the other powers there conferred; and the plaintiff prays that they may be restrained in that respect. This suit was commenced when the late Commissioners were in office, but as it is against the Board as an official body, and not the members personally, it has been resubmitted for decision within the past month.

The defendants admit that it is their purpose to carry into execution the powers with which they are invested, and to establish rates of charges for passengers and freight upon the steamships, so far as relates to transportation between ports within the State, but disclaim all intention to regulate or interfere with the transportation of persons or freight from ports within the State to ports without it, or from ports without it to ports within it.

The question is, can they regulate or interfere with transportation of persons or merchandise between ports within the State, if they be in transit to or from other States, or the transportation involves a voyage upon the ocean. The question in one of its aspects is new, but in neither aspect is it difficult to solve. The Constitution vests in Congress the power to regulate commerce with foreign nations and among the several States. The power to regulate is the power to govern; to prescribe the rules by which commerce shall be conducted, to declare when it shall be burdened with conditions, and when it shall be free and untrammelled.

Commerce, as has often been said, is a term of large import. It includes the carriage of persons, and the transportation, purchase, sale, and exchange of commodities between citizens or subjects of other countries and our own people, and between the people of different States. It embraces navigation, and extends to all the instruments used in navigating inland waters and the ocean.

It was at one time a subject of much discussion and some disagreement among Judges whether the power conferred upon Congress to regulate commerce is exclusive in its character or concurrent with that of the States. By recent decisions this question has been put at rest. When the subject upon which Congress can act under this power is national in its character, and admits and requires uniformity of regulation, affecting alike all the States, then the power is in its nature exclusive; but when the subject upon which the power is to act is local in its operation, then the power of the State is so far concurrent that its action is permissible until Congress interferes and takes control of the subject. Of the former class, is all that portion of commerce with foreign countries and among the States, which consists in the carriage of persons and the transportation, purchase, sale, and exchange of commodities. From necessity there can be but one rule in such cases for all the States; and the only power competent to prescribe a uniform rule is one which can act for the whole country. Its non-action in such cases is, therefore, equivalent to a declaration that such commerce shall be free from State interference. "There would otherwise be," as said in *County of Mobile vs. Kimball*, "no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens and against the products and citizens of other States. But it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States, was to insure uniformity of regulation against conflicting and discriminating State legislation." (102 U. S. 697; see, also, *Cooley vs. The Board of Wardens of the Port of Philadelphia*, 12 How. 299; *Gilman vs. Philadelphia*, 3 Wall. 713; *Wellton vs. State of Missouri*, 91 U. S. 275.)

Of the second class, are all those subjects which can be best regulated by local authority, such as harbor pilotage, and the placing of buoys and beacons to guide ships to the proper channel in entering bays and harbors. Action by the States upon such subjects is not

deemed any encroachment upon the power of the General Government; but when Congress acts with respect to them the authority of the State is superseded.

It follows from these views that with respect to all inter-State or foreign commerce the Railroad Commissioners have no authority to interfere. Congress has prescribed all the regulations which are permissible so far as that commerce is carried on in vessels. These regulations, it is true, are principally designed to insure safety in the navigation of the vessels and the protection and health of their officers and crews. Congress has not attempted to prescribe what charges may be made for the carriage of persons and merchandise in vessels—considering, perhaps, that they were more likely to be regulated upon just and equitable principles by competition than by legislation. Whatever the reason Congress has not seen fit to act upon that subject.

With respect to purely domestic commerce carried on by these vessels the Commissioners possess all the authority which the State can confer. But when can the vessels in carrying persons and merchandise between different ports in the State be held to be engaged in commerce purely domestic—for there is a commerce within the State which does not come within that designation? We answer that they are not so engaged when they take up persons or merchandise to carry to a destination within the State from a place without it, or they take up persons or merchandise in the State to carry to a place without its limits. This is the purport of the decision of the Supreme Court in the case of the steamer "Daniel Ball" (10 Wallace, 557). That vessel was engaged in shipping and transporting down Grand River, in Michigan, goods destined and marked for other States than Michigan, and in receiving and transporting up the river goods brought within the State from without its limits. But as her agency in the transportation was entirely within the limits of the State, and she did not run in connection with or in continuation of any line of vessels or railway leading to other States, it was contended that she was engaged entirely in domestic commerce. But the Court answered that the conclusion did not follow, and said that "so far as she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan and destined to places within that State, she was engaged in commerce between the States, and, however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress." (10 Wallace, 565.)

Nor are the vessels engaged in purely domestic commerce when their voyages between ports of the same State require them to navigate the ocean. When they go beyond the marine league they pass out of the jurisdiction of the State, and come under the exclusive control of Congress. To bring the transportation within the control of the State as part of its domestic commerce, the subject transported

must be within the entire voyage under the exclusive jurisdiction of the State. (Lord vs. Steamship Company, 102 U. S. 541.)

If the steamships of the plaintiff carried any persons or merchandise between ports of the State, not going out, on their voyage between those ports, of the jurisdiction of the State, and the persons or merchandise carried not coming from any other State or foreign country, or going to another State or country, the transportation commencing and ending in the State, then to that extent they would be engaged in commerce purely domestic, and to that extent the Railroad Commissioners might have jurisdiction to regulate the fares and freights for transportation on the vessels. But it is conceded by the pleadings that in every voyage made by the vessels to ports from San Francisco, they pass out upon the ocean beyond a marine league from the shore. They are, therefore, engaged in no transportation which the Commissioners can regulate.

We have had some doubt as to our jurisdiction in this case, but as the Commissioners have raised no objection on that ground, and seem anxious to have an adjudication as to the extent of their authority, we have not deemed it expedient to refuse a consideration of the questions submitted. Besides, without some adjudication upon them, the plaintiff would be placed in great embarrassment. If the Commissioners have the authority claimed, the company would be liable to a fine of twenty thousand dollars for every instance of disregard of their regulations, and each of its officers would be liable to be punished by fine and imprisonment.

Let a decree be entered for the plaintiff as prayed in the bill.

APPENDIX E.

STATEMENT FROM DAVID NYE, SUPERINTENDENT OF THE NORTH
PACIFIC COAST RAILROAD COMPANY, IN ANSWER TO RESOLUTION
No. 15.

[Filed December 21, 1883.]

NORTH PACIFIC COAST RAILROAD COMPANY,
GENERAL OFFICE, 408 CALIFORNIA STREET, }
SAN FRANCISCO, December 14, 1883. }

To the honorable Board of Railroad Commissioners:

GENTLEMEN: Replying to your valued favor of the sixteenth ultimo, I beg to submit to your honorable Board the following facts, namely :

The total earnings of our road in 1882 were	\$358,199 67
The total operating expenses in 1882 were	290,781 69
Leaving \$67,417 98 to pay interest on bonded and other debts, amounting to ..	63,967 03
Leaving a net profit of	3,450 95

In \$2,816,304 53, the cost of the property, which I think shows sufficient cause why reductions should not be made in the rates charged by this company, at the same time stating that I do not know of any of our patrons complaining of the present rates.

Yours respectfully,

DAVID NYE,
General Superintendent.

SWORN STATEMENT FROM A. M. STEVENSON, PRESIDENT VACA VAL-
LEY AND CLEAR LAKE RAILROAD COMPANY, IN ANSWER TO
RESOLUTION No. 15.

[Filed December 21, 1883.]

OFFICE OF THE VACA VALLEY AND CLEAR LAKE RAILROAD }
COMPANY, VACAVILLE, December 10, 1883. }

*To the honorable Board of Railroad Commissioners of the State of
California:*

GENTLEMEN: The undersigned, A. M. Stevenson, President of the Vaca Valley and Clear Lake Railroad Company, hereby appears on behalf of said company, and submits for your consideration the following reasons why this road should not be subjected to the same passenger rates as the Central Pacific Railroad Company and its leased lines.

First—That the passenger rates are not considered exorbitant by

those who have enjoyed the advantages of the road from its construction.

Second—That the passenger rates were established by the citizens along said road, who met in convention and agreed on the present tariff for passengers.

Third—That the passenger train is run to accommodate the people along the line of road, who get on and off at other than regular stations.

Fourth—That the country through which the road passes is sparsely inhabited, "being held in large grants," consequently the travel is light.

Fifth—That our near proximity to the California Pacific Railroad at Woodland, Davisville, Dixon, Elmira, and Suisun, prevents any excessive charges by us.

Sixth—That the present rates of passenger fare on said railroad are reasonable, producing a moderate profit for the cost and expenses incurred in the performance of the transportation of said passengers.

A. M. STEVENSON,
President V. V. and C. L. R. R. Co.

Subscribed and sworn to before me, on the twenty-first day of December, 1883, at the City and County of San Francisco, State of California, by A. M. Stevenson, President Vaca Valley and Clear Lake Railroad Company, as a full and true statement, to the best of his ability, knowledge, and belief.

W. W. FOOTE,
Railroad Commissioner Third District.

SUPPLEMENTAL STATEMENT, VACA VALLEY AND CLEAR LAKE RAILROAD COMPANY.

Passenger earnings from January 1 to October 31, 1883		\$7,715 99
Total passenger expense, January 1 to October 31:		
To labor	\$2,098 46	
Stationery and printing	159 26	
Repairs, passenger cars	187 85	
Oil and waste	283 78	
Wood	2,150 77	
Miscellaneous expense	500 00	
		5,380 12
Total passenger earnings	\$7,715 99	
Total passenger expense	5,380 12	
		2,335 87
Total passenger earnings	\$7,715 99	
Less twenty-eight and one half per cent proposed reduction	2,199 05	
		5,516 94
Earnings	\$5,516 94	
Expense	5,380 12	
		136 82
Earnings for ten months		\$7,715 99
Average number passengers per month		920
Average number of passengers per day		35
Average earnings for one day		\$29 67
Average amount paid by each passenger		84 cents
Amount paid by each passenger per mile for one day's run of passenger train, (120 miles per day)		7 mills

SWORN STATEMENT FROM J. N. VICTOR, SUPERINTENDENT OF THE
CALIFORNIA SOUTHERN RAILROAD COMPANY, IN ANSWER TO
RESOLUTION NO. 15.

[Filed December 21, 1883.]

CALIFORNIA SOUTHERN RAILROAD COMPANY, }
SUPERINTENDENT'S OFFICE, }
NATIONAL CITY, CAL., December 17, 1883. }

W. R. Andrus, Esq., Secretary Board of Railroad Commissioners, San Francisco, California:

DEAR SIR: In response to Order No. 15, dated November fifteenth, to appear before the honorable Board of Railroad Commissioners and show cause why reductions should not be made on the California Southern Railroad corresponding with those made on the Central and Southern Pacific Railroads and leased lines, I herewith beg to submit the following:

The California Southern Railroad is but an unfinished link in a contemplated new and independent through line.

The road has no land grant, neither has it received Government or State aid of any kind. It runs through a rough, broken country, very sparsely settled. It was an extremely expensive road to build, and is a very hard and expensive one to operate.

The three millions of dollars invested in building from San Diego Bay to Colton was foreign capital, and every dollar of it.

With the greatest economy in operating, it has, up to this date, been impossible to pay running expenses, much less any interest on the large investment.

Since the line was opened to San Bernardino, it has been a constant struggle for existence with us.

Our rates are low, very low, when compared with other unfinished new roads built through similar country. And the people interested, almost without exception, are satisfied that, under the circumstances, the management are doing all that could consistently be asked.

Our opponents are doing everything in their power to reduce the revenue of the road and to discourage eastern friends from putting more money in this project.

Nothing could so well serve their purpose as this very action by your honorable Board at this critical time. I am well satisfied the people of Southern California earnestly desire the extension of the California Southern Railroad.

They are watching with the greatest personal interest every move made. Not a man but would regret any action tending directly or indirectly to discourage or retard this project.

Herewith please find statement giving details of earnings and expenses of the road for ten months, ending October thirty-first, which shows an actual deficit (exclusive of interest) of \$9,103 86, which, with interest added, would give a deficit of \$164,153 86.

All of which is respectfully submitted, and would seem to show most conclusive reasons why reductions should not be made on the California Southern Railroad.

Very respectfully,

J. N. VICTOR,
Superintendent.

Subscribed and sworn to on the twenty-first day of December, A. D. 1883, in the City and County of San Francisco, State of California, by J. N. Victor, Superintendent of the California Southern Railroad Company, as a full, true, and correct statement, to the best of his information and belief.

W. W. FOOTE,
Railroad Commissioner, Third District.

SWORN STATEMENT FROM JOHN F. KIDDER, SUPERINTENDENT OF
THE NEVADA COUNTY NARROW GAUGE RAILROAD COMPANY, IN
ANSWER TO RESOLUTION NO. 15.

[Filed December 21, 1883.]

*To the honorable the Board of Railroad Commissioners of the State
of California:*

GENTLEMEN: Answering the resolution of your honorable Board, to appear and show cause why reductions should not be made on the Nevada County Narrow Gauge Railroad, corresponding to those made on the Central Pacific and Southern Pacific Railroads, and leased lines, I would most respectfully submit the following reasons to your honorable body:

The Nevada County Narrow Gauge Railroad Company was incorporated in 1874, under a special Act of the Legislature of California (a copy of which is herewith submitted), authorizing said corporation to charge certain rates, named therein, for passenger and freight traffic. Without said guarantee of the State of California, no one would have been found willing to invest their money in the enterprise, as the ordinary rates, under the general railroad law, could by no possibility have been made to pay.

The subscribers to the stock of the company were local men, interested on the line of the road, who paid in full for their stock at face value, and who have received but three dividends of three per cent each on a sum total of twenty-one thousand seven hundred and ninety-eight (\$21,798*) dollars on their investment of two hundred and forty-two thousand two hundred (\$242,200) dollars for over seven years, which certainly cannot be regarded as an extraordinary inducement for capitalists to invest in local roads. The company has a bonded debt of two hundred and sixty thousand (\$260,000) dollars, bearing an annual interest of eight per cent, and has, heretofore, been able promptly to pay said interest, together with the taxes, but will be obliged to borrow a small sum to meet the interest and taxes due January 1, 1884.

The road is a mountain line, with gradients of from ninety to one hundred and twenty-one feet per mile, with not a full mile of level in the whole twenty-three miles. There are one hundred and ninety-three (193) separate curves, making a total curvature of 7,600°, or more than twenty-one (21) full circles, curves varying in radius from three hundred and one to five hundred and seventy-three feet. There

* Forty-five per cent paid in 1874; interest paid September, 1881; interest paid March, 1882; interest paid September, 1882.

are twenty-five hundred (2,500) lineal feet of trestling from thirty-five (35) to ninety-five (95) feet in height. Two truss bridges of one hundred and sixty feet clear span each, of a distance from surface of water to top of rail of eighty-seven and ninety-five feet respectively. Two tunnels lined and supported with timber, the aggregate length being eight hundred feet. We were compelled last year to renew one truss bridge at a cost of \$9,500, and during the present year have expended over \$15,000 in rebuilding one truss bridge and the trestle approaches to the same, and over \$600 in replacing sound timbers for decayed ones in the tunnels. It will thus be evident that we have a most expensive road to operate.

We are dependent entirely upon a mining county to sustain us, and our business could not be increased by lowering rates. One branch of mining industry, viz.: hydraulic, has been almost paralyzed for the last two years by adverse litigation.

Should the rates of traffic on our road be reduced, it would be impossible to operate, and I sincerely trust that your honorable body will not for a moment entertain a proposition of that kind which is unasked for by the patrons of the road.

Respectfully submitted.

JOHN F. KIDDER,

General Superintendent and Chief Engineer.

DECEMBER 21, 1883.

Subscribed and sworn to before me on the twenty-first day of December, A. D. 1883, at the City and County of San Francisco, State of California, by John F. Kidder, General Superintendent and Chief Engineer of Nevada County Narrow Gauge Railroad, as a full and true statement to the best of his ability, knowledge, and belief.

G. J. CARPENTER,

Railroad Commissioner, First District.

APPENDIX F.

EXTRACTS FROM THE ANNUAL REPORTS OF THE CENTRAL PACIFIC
RAILROAD, ITS LEASED LINES, AND OTHER RAILROAD COMPANIES,
TO THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF
CALIFORNIA, FOR THE YEAR ENDING DECEMBER 31, 1882.

[Broad Gauge.]

CENTRAL PACIFIC RAILROAD AND LEASED LINES.

Total earnings passenger department.....	\$8,777,344 50
Total earnings freight department.....	\$16,310,047 95
Total miscellaneous earnings, telegraph, warehouse, etc.....	\$1,588,109 96
Total income from all sources.....	\$26,675,502 41
Total expenses.....	\$17,101,766 92
Total net income.....	\$9,573,735 49
From which deduct interest on funded and other debts credited to sinking fund and United States, and dividends.....	\$9,538,723 56
Remainder.....	\$35,011 93
Net income, 1881.....	\$10,809,828 93
Net income, 1882.....	\$9,573,735 49
Net income, 1882, less by.....	\$1,236,093 44
Total income, 1881.....	\$25,389,257 35
Total income, 1882.....	\$26,675,502 41
Difference.....	\$1,286,245 06
Earnings per mile of road operated, 1881.....	\$8,899 28
Earnings per mile of road operated, 1882.....	\$8,436 95
Earnings per mile of road operated, 1882, less than in 1881.....	\$462 33
Earnings per train mile (total passengers and freight), 1881.....	\$2 83
Earnings per train mile (total passengers and freight), 1882.....	\$2 54
Earnings per mile, passengers, 1882.....	\$1 38
Earnings per mile, freight, 1882.....	\$1 13
Number of passengers carried.....	7,688,514
Number of passengers carried east and west.....	95,226
Number of passengers carried one mile.....	255,824,363
Number of tons carried.....	3,109,697
Number of tons carried from other States.....	390,594
Number of tons carried in this State.....	2,719,103
Number of tons carried, produced in this State.....	1,716,566
Total number of tons carried one mile.....	902,981,309
Freight mileage to and from other roads.....	370,504,384
Average rate of freight per ton per mile for all.....	1 ⁸¹ / ₁₀₀ cents
Average rate of freight per ton per mile, operated by this company.....	2 ³⁸ / ₁₀₀ cents
Average rate of fare per mile for all passengers.....	2 ⁷⁰ / ₁₀₀ cents
Percentage of expense to total transportation earnings.....	62 ⁸⁰ / ₁₀₀ per cent

[Broad Gauge.]

SOUTHERN PACIFIC RAILROAD COMPANY.

Total earnings passenger department.....	\$557,520 25
Total earnings freight department.....	\$672,295 16
Total transportation earnings.....	\$1,229,815 41
From rents, use of road and equipments leased.....	\$1,666,666 00
From other sources.....	\$27,583 94
Total income from all sources.....	\$2,924,065 35
Total expenses.....	\$1,111,261 20

FOURTH ANNUAL REPORT OF THE

Net income.....	\$1,812,804 15
Interest on funded and other debts.....	\$1,712,434 69
Surplus paid to Sinking Fund.....	\$100,369 46
No dividends.	
Earnings per mile of road operated (176 miles).....	\$6,987 19
Earnings per train mile (total passengers and freight).....	\$2 62
Number of passengers carried.....	535,095
Number of passengers carried one mile.....	19,357,351
Number of tons carried, not including gravel.....	301,859
Average rate of fare per mile for all passengers.....	2 ⁸ / ₁₀₀ cents
Average rate of freight per ton per mile.....	3 ⁷ / ₁₀₀ cents
Length of road operated.....	176 ¹⁰⁰ / ₁₀₀ miles

[Narrow Gauge.]

SOUTH PACIFIC COAST RAILROAD COMPANY.

San Francisco to Santa Cruz.....	80 ⁸ / ₁₀₀ miles
Gross earnings passenger department.....	\$295,047 13
Gross earnings freight department.....	\$334,168 55
Total gross earnings.....	\$629,215 68
Income from all other sources.....	\$34,085 82
Total income.....	\$663,301 50
Total expenditures.....	\$542,882 40
Net income.....	\$120,419 10
Total train miles.....	426,695
Total number of passengers carried.....	982,437
Total number of passengers carried one mile.....	13,795,373
Total number of tons freight, in this State, carried.....	192,112
Total number of tons of freight carried one mile.....	6,511,150
Average rate of fare per mile for all passengers.....	2 ⁸ / ₁₀₀ cents
Average rate of freight per ton per mile on roads operated by this company.....	8 cents
Average rate of fare, not including ferry.....	3 ³³ / ₁₀₀ cents
Highest rate of fare per mile.....	7 ¹⁰⁰ / ₁₀₀ cents
No percentage of expense to total transportation earnings given.	

[Narrow Gauge.]

NEVADA COUNTY RAILROAD COMPANY.

Colfax to Nevada City.....	22 ⁵⁶ / ₁₀₀ miles
Total earnings, passenger department.....	\$38,842 92
Total earnings, freight department.....	\$66,430 28
Total transportation earnings.....	\$105,273 20
Earnings, per mile.....	\$4,649 87
Total income from all sources.....	\$105,291 92
Total expenses.....	\$89,182 54
Total net income.....	\$16,109 38
Percentage, expenses.....	84 ⁸² / ₁₀₀ per cent
Net earnings, passenger train, per mile.....	17 cents
Net earnings, freight train, per mile.....	40 cents
Total number of passengers carried.....	44,165
Total number of passengers carried one mile.....	425,962
Total number tons of freight.....	28,449
Average rate of fare for all passengers.....	8 ⁷ / ₁₀₀ cents
Average rate of freight per ton per mile for all.....	16 ³³ / ₁₀₀ cents

[Narrow Gauge.]

NORTH PACIFIC COAST RAILROAD COMPANY.

San Francisco to Duncans Mills.....	74 ²⁵ / ₁₀₀ miles
Total earnings, passenger department.....	\$194,204 02
Total earnings, freight department.....	\$155,158 85

BOARD OF RAILROAD COMMISSIONERS.

87

Total transportation earnings.....	\$349,362 87
Total income from all sources.....	\$358,199 67
Total expenses.....	\$290,781 69
Net income.....	\$67,417 98
Percentage of same to capital stock and net debt.....	1 $\frac{1}{10}$ per cent
Net earnings per passenger train per mile.....	13 cents
Net earnings per freight train per mile.....	43 $\frac{1}{2}$ cents
Earnings per mile of road operated.....	\$3,574 04
Total train miles run.....	227,235
Total number passengers carried.....	687,896
Total tons of freight (not including gravel).....	70,721 $\frac{853}{1000}$
Total freight or tons carried one mile.....	3,449,337
Average rate of local freight per ton per mile.....	4 $\frac{1}{2}$ cents
Percentage of expenses to transportation earnings.....	83 $\frac{1}{2}$ per cent

[Broad Gauge.]

CALIFORNIA SOUTHERN RAILROAD COMPANY.

National City to Colton.....	126 $\frac{86}{100}$ miles
Total earnings, passenger department.....	\$27,216 21
Total earnings, freight department.....	\$23,961 68
Total transportation earnings.....	\$51,177 89
Earnings per mile of road operated.....	Not reported
Total income from all sources.....	\$51,681 28
Total expenses.....	\$39,588 02
Total net income.....	\$12,093 26
Percentage of expense to total transportation earnings.....	77 per cent
Total number of passengers carried.....	9,087
Total number of tons carried one mile.....	541,474
Average rate of fare per mile for all passengers.....	4 $\frac{1}{2}$ cents
No average rate per ton is given.	
The highest rate per ton per mile for freight.....	15 cents
The lowest rate per ton per mile for freight.....	1 cent

[Broad Gauge.]

VACA VALLEY AND CLEAR LAKE RAILROAD COMPANY.

Elmira to Madison.....	29 miles
Total earnings, passenger department.....	\$11,482 21
Total earnings, freight department.....	\$80,215 91
Total transportation earnings.....	\$91,698 12
Earnings per mile.....	\$3,162 00
Total income from all sources.....	\$91,698 12
Total expenses.....	\$54,433 46
Net income.....	\$37,264 66
No dividends.	
Number of passengers carried, about.....	15,000
Number of tons of freight.....	50,378
Average rate all passengers per mile.....	8 cents
Average rate freight per ton per mile.....	7 cents
Percentage of expense.....	59 $\frac{4}{10}$ per cent

[Broad Gauge.]

SAN FRANCISCO AND NORTH PACIFIC RAILROAD COMPANY.

San Francisco to Cloverdale.....	90 miles
Branch from Fulton to Guerneville.....	16 miles
Total earnings passenger department.....	\$237,066 61
Total earnings freight.....	\$233,910 04
Transportation earnings.....	\$470,976 65
Earnings per mile of road operated.....	\$5,091 64

Total income from all sources.....	\$505,771 83
Total expense operating the road.....	\$282,784 46
Net income.....	\$222,987 37
Percentage of expense to total transportation earnings.....	55.10% per cent
Total number of passengers carried.....	151,840
Total passengers carried one mile.....	7,074,171
Number of tons carried (no gravel).....	85,054
Total number tons carried one mile.....	3,682,308
Average rate fare for all passengers.....	3.85 cents
Average rate of freight per ton per mile for all.....	6.38 cents

[Broad Gauge.]

CALIFORNIA NORTHERN RAILROAD COMPANY.

Marysville to Oroville.....	26½ miles
Total earnings, passenger department.....	\$20,494 19
Total earnings, freight department.....	\$20,688 00
Transportation earnings.....	\$41,182 19
Total expense.....	\$25,564 08
Net income.....	\$15,618 11
Earnings per mile of road operated.....	\$1,554 04
Earnings per train mile (passenger and freight).....	\$2 12½
Percentage of expense to transportation earnings.....	62½ per cent
Average rate of fare per mile.....	Not given
Average rate of freight per ton per mile.....	Not given

The Black Diamond Coal Mining Company's Railroad, the Pittsburg Coal Mine Company's Railroad, the Salmon Creek Railroad Company, the Mendocino Railroad Company, and the Pacific Coast Railroad Company, have furnished this office with no report for 1882.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA.

It is hereby certified that at a meeting of said Board held on the seventh day of January, 1884, at its office in San Francisco, to consider and adopt its annual report for the year 1883 to the Governor of said State, on motion the foregoing report, signed by Commissioners Carpenter and Humphreys, together with the appendices therewith, was duly approved and adopted as the report of said Commission for the year 1883, Commissioners Humphreys and Carpenter voting for, and Commissioner Foote against, the motion.

Thereupon it was unanimously ordered by the Commission that its Secretary immediately deliver said report to the Governor of said State, and that two thousand copies of said report be printed at the office of the State Printer of said State.

Attest:

[SEAL.]

W. R. ANDRUS,
Secretary of the Board of Railroad Commissioners.

INDEX.

INDEX.

ANNUAL REPORT OF COMMISSION—	
What to contain.....	7
An official act involving the judgment and discretion of the Commission.....	7, 45, 46
ANNUAL RETURNS OF RAILROAD COMPANIES TO THE COMMISSION—	
Central Pacific Railroad and leased lines.....	85
Southern Pacific Railroad Company.....	85
South Pacific Coast Railroad Company.....	86
Nevada County Narrow Gauge Railroad Company.....	86
North Pacific Coast Railroad Company.....	86
California Southern Railroad Company.....	87
Vaca Valley and Clear Lake Railroad Company.....	87
San Francisco and North Pacific Railroad Company.....	87
California Northern Railroad Company.....	88
ANSWERS—	
Of Central Pacific Railroad Company to questions of Commission.....	37, 49-62
Of Commission to protests of Central Pacific Railroad Company.....	30, 31, 32, 38
COMMISSION—	
Origin and attitude of.....	7
Methods and measures of present Board.....	8, 13, 46
Powers and processes of, prescribed and defined by the Constitution.....	8
Proceedings and methods of, reviewed.....	13
Act of majority of, act of Commission.....	45
Amended Rules of Proceedings of, introduced by Commissioner Carpenter.....	16
Cases to which they apply.....	17
COMMISSIONER CARPENTER—	
Substitute for Resolutions 1 and 2 introduced by	14, 15
Amended Rules of Procedure by.....	16
Opinion by, in Richards & Harrison vs. The Central Pacific Railroad Company.....	17
Order by, requiring the Central Pacific Railroad Company to show cause why reduction of inland freight rates should not be made.....	32
Standing order by, to expedite the preparation of schedules.....	33
Order by, reducing rates of charge on inland freights.....	37
Motion by, requiring Northern California Railroad Company to show cause why the maximum of passenger fares on its road should not be reduced to five cents per mile.....	41
Order by, establishing new freight classification and schedule.....	40
COMPLAINTS BY INDIVIDUALS—	
Requisites of.....	17
How regarded and disposed of by Commission.....	17
CENTRAL PACIFIC RAILROAD COMPANY—	
Protests by	37, 63, 67
Miles of railroad in State operated by, and leased lines.....	42
Synopsis of annual returns	85
COMPARISONS—	
Of existing rates.....	39, 40
Preliminary to reductions.....	9, 28, 40
COMPENSATION—	
Measure of, in this country.....	9
Rule of, in England.....	10
Rule of, implied in every franchise for "public use".....	10
Rule of, prescribed in Civil Code	11
Rule of, for services subject to conditions.....	10
Rule of, to be applied impartially.....	10, 11, 12

CONSTITUTION—	
Powers defined and processes prescribed by.....	8
Sections of statute corresponding to provisions of.....	8
DISCRIMINATION (See Extortion).	
EXTORTION AND DISCRIMINATION—	
Just and reasonable charges the only remedy therefor.....	9
EXTENSIONS, RENEWALS, AND BETTERMENTS—	
Of roads belonging to the Central Pacific system in State during year.....	43
On Placerville and Sacramento Valley Railroad.....	44
FOOTE, COMMISSIONER—	
Resolutions by.....	13
Second resolution by.....	27
Dissenting opinion by, in case of Richards & Harrison vs. Central Pacific Railroad Company.....	23
Passenger schedule by.....	36
Reasons for not adopting it.....	36
Order proposing uniform reduction of freight charges.....	41
HUMPHREYS, COMMISSIONER—	
Introduces first schedule of passenger rates.....	29, 30
Second schedule by.....	33
Order reducing fares on Northern Division of Southern Pacific Railroad.....	32
Order by, requiring railroad companies not belonging to the Central Pacific system, to show cause why rates of fares and freights should not be reduced on their roads..	42
LAW—	
Governing Commission.....	8-12
No respecter of persons or corporations.....	11
Conclusions of, upon principles of adjudicated cases.....	12
LEGISLATION SUGGESTED—	
Requiring railroad companies to execute schedules as ordered by Commission.....	34
Empowering Commission to make and enforce orders against railroad companies for safety and convenience of public.....	42
LETTERS—	
By Secretary of State to Commission relative to fees of attorneys in Pacific Coast Steamship Company vs. Railroad Commissioners.....	35
Order and action of Commission in the premises.....	36
MAJORITY OF COMMISSIONERS—	
Act of, act of Commission.....	45
METHODS AND MEASURES OF COMMISSION.....	
8	
MEETINGS OF COMMISSION—	
Itinerant.....	44
Regular.....	44
ORDERS—	
Substitute by Commissioner Carpenter for resolutions 1 and 2.....	14
Standing, by Commissioner Carpenter, to facilitate the preparation of schedules.....	33
By Commissioner Humphreys, reducing fares on Northern Division Southern Pacific Railroad.....	32
By Commissioner Carpenter, requiring Central Pacific Railroad Company to show cause why reductions of inland rates should not be made.....	32
By Commissioner Carpenter, in case of Pacific Coast Steamship Company vs. Railroad Commissioners.....	35
By Commissioner Humphreys, requiring railroad companies not belonging to Central Pacific system, to show cause why reductions of rates for fares and freights should not be made on their roads.....	42
By Commissioner Carpenter, reducing rates of charge on inland freights.....	37, 40
By Commissioner Foote, proposing uniform reductions on rates of charge to tide-water.....	41
POWERS AND PROCESSES OF COMMISSION.....	
8	
PROCEDURE, AMENDED RULES OF—	
Cases to which they apply.....	16
Dilatory proceedings not favored by.....	16

PROTESTS—	
Of Central Pacific Railroad Company to passenger schedule.....	63
Comments of Commission thereon.....	30-32
Of Central Pacific Railroad Company to order reducing charges on inland freights....	67
Answer thereto.....	38
PACIFIC COAST STEAMSHIP COMPANY VS. RAILROAD COMMISSION—	
Decision of Court.....	76
RATES OF CHARGE—	
To make them just and reasonable the only legal remedy for extortion and discrimination.....	9
RESOLUTIONS OF COMMISSIONER FOOTE—	
Reasons for their rejection.....	13, 28
RICHARDS & HARRISON VS. CENTRAL PACIFIC RAILROAD COMPANY—	
Opinion by Commissioner Carpenter.....	17
Specially concurred in by Commissioner Humphreys.....	22
Dissenting opinion of Commissioner Foote.....	23
REDUCTIONS OF CHARGES FOR FARES AND FREIGHTS—	
Nature of, stated and illustrated.....	31
Uniform, effect of.....	9, 10, 28, 36
Differential, why adopted.....	9-12, 36, 42
RAILROAD COMPANIES—	
Required to show cause why their rates of charges for fares and freights should not be subject to the same reductions as those made upon the Central Pacific system.....	42
South Pacific Coast Railroad Company.....	42
North Pacific Coast Railroad Company.....	42
San Francisco and North Pacific Coast Railroad Company.....	42
Vaca Valley and Clear Lake Railroad Company.....	42
Nevada County Narrow Gauge Railroad Company.....	42
Santa Cruz Railroad Company.....	42
California Northern Railroad Company.....	42
RAILROADS—	
Miles of, in State.....	42
Broad gauge.....	42
Narrow gauge.....	42
RAILROAD SYSTEM OF STATE—	
Local traffic of trunk lines not equal to their carrying capacity.....	32
Competing roads neither possible nor desirable.....	32
Branches and feeders to districts without railroad facilities the desideratum.....	32
RULE OF COMPENSATION—	
Relates to service on railroads, and not to loans of credit or subsidies to aid their construction.....	11
Government and citizen passengers on same terms.....	11, 12
STATUTE—	
Sections of, corresponding to constitutional provisions.....	8
STATE—	
Power of, not disowned.....	10
SCHEDULES ADOPTED—	
Of passenger fares by Commissioner Humphreys.....	29
Reasons therefor.....	29
Roads affected thereby.....	30
Of new classification, and reduction of inland freight rates by Commissioner Carpenter.....	37-39
Order establishing same.....	40
Notice to companies affected thereby.....	40
TRANSPORTATION—	
Governing factors thereof.....	10
Theory and practice of Commission concerning, not new.....	11, 45

REPORT
OF
COMMISSIONER W. W. FOOTE.

[THIRD DISTRICT.]

REPORT.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA, }
SAN FRANCISCO, January 19, 1884. }

To his Excellency Governor GEORGE STONEMAN:

SIR: On the seventh day of this month, there was presented to your Excellency, in accordance with the constitutional provision requiring the same, the Report of the Board of Railroad Commissioners for the year 1883. This report was, as I am informed by its author, prepared by Commissioner Carpenter, and as you will observe, is signed by himself and Commissioner Humphreys.

At the time of the presentation of this report to the Board, at an informal meeting, I addressed you a letter, explaining why I did not vote for its adoption, and my reasons for not signing the same; and you were also informed, that so soon as possible I would prepare and send you a report of my own, of the workings of the Commission, setting forth what it had done, and what it had failed to accomplish, during the year immediately last past. This is the earliest opportunity I have had of fulfilling that promise.

THE MAJORITY REPORT.

On the seventh day of January, 1884, at about twelve o'clock noon of that day, I was at the office of the Board of Railroad Commissioners, in the City and County of San Francisco. Commissioners Carpenter and Humphreys were both present. Mr. Carpenter went to his desk, and from one of the drawers thereof drew forth a roll of manuscript, which he presented to me with the remark that this was his report, and as the year within which the report should be filed had about expired, he desired to send it to Sacramento that same afternoon. I took the report and saw, after a moment's perusal, that it would be impossible for me to even read it all casually, much less digest its contents, in the brief time allotted me for the purpose. After reading a few pages, I said to Mr. Humphreys that the report seemed to have been prepared with the idea that I would not sign it, and the remark was made upon the discovery of several passages in the report highly laudatory of the self-styled "majority of one," and reflecting, as I then thought, and still think, very seriously upon the intelligence or good faith of my actions as a member of the Board. Mr. Humphreys said that he had not read the report carefully, but that he would sign nothing which reflected upon me. It is but justice to Mr. Carpenter to state that he expressly disclaimed the intention which I had imputed to him. Mr. Carpenter likewise

informed me that the statistical portion of the report had been carefully compared with the original documents on file in our office, and that it was literally accurate. A few minutes after this conversation occurred (which interval had been occupied by myself in reading that portion of the report which is mainly devoted to a defense of the acts of the majority), all three of the Commissioners went into the next room, which is occupied by the Secretary of the Board, Mr. W. R. Andrus, who was then present. I here announced that, for reasons which were sufficient to my mind, I should decline to sign the report; at this time all three of the Commissioners were standing about the room. Without any pretense of coming to order, Mr. Carpenter moved the adoption of the report, which motion was seconded by Mr. Humphreys with a promptness that somewhat astonished me, recollecting, as I did, that only a few moments before he had stated that he only knew of its contents in a casual way. Such celerity of action upon the part of Mr. Humphreys, touching the adoption of an annual report of the Board, the contents of which he was professedly ignorant of, was at the time, and still is, very mystifying to me. After the adoption of the report, a motion was made to send the same to the Governor, with an order for printing two thousand copies, for which motion I cheerfully voted, as I desired to preserve so valuable a document in a more enduring form than it then was, and also for the reason that I might some day be able to give the contents an attentive perusal, no copy of it having been retained in our office. After these proceedings had taken place, Mr. Carpenter placed the report in my hands, that I might have the Stenographer of the Board take down and transcribe for me such portions of the report as I desired, during the afternoon of the seventh of January, 1884. This service Mr. Girvin performed for me in about an hour, and subsequently wrote out his short-hand notes, which transcription is all I have had to use as the basis of whatever I may have to say concerning the report of the majority. I shall assume the right to criticise this report with the same freedom which has characterized the utterances of the author of the document, when commenting upon my official actions.

ORGANIZATION OF THE PRESENT BOARD.

The three gentlemen elected as Railroad Commissioners at the last general election, Hon. G. J. Carpenter, William P. Humphreys, and W. W. Foote, met at the offices of the old Board-room, on Sansome Street, in San Francisco, on the ninth day of January, 1883. They were received most courteously by Mr. J. S. Cone, one of the outgoing Commissioners, and Mr. Andrus, the Secretary of the Board. Upon motion of Commissioner Foote, Hon. G. J. Carpenter was elected President of the Board, and by the unanimous consent of all the Commissioners, Mr. Carpenter named Mr. John P. Carroll, of San Francisco, as Bailiff of the Board. Mr. Foote then moved that the Board complete its organization by the election of a Secretary, whereupon Mr. Humphreys suggested that Mr. W. R. Andrus act as temporary Secretary, which Mr. Andrus declined to do. After some discussion upon the subject, Mr. Carpenter offered a resolution declaring in effect that Mr. Andrus was legally Secretary until his successor was appointed, for which resolution the President and Mr. Humphreys voted, and since that time Mr. Andrus has continued to per-

form the duties of the office. Mr. Girvin, the Stenographer of the old Board, holds his place, under the present Board, by the same tenure as Mr. Andrus, and, in this connection, I cheerfully bear testimony to the fact that the employés of the Board, one and all, have been faithful, efficient, and obliging in the discharge of their various duties.

CREATION OF THE BOARD.

One of the main reasons, in my judgment, why the present Constitution was adopted, is to be found in the fact that the producing classes of this State were disgusted with the abortive efforts, which for years had been made, to curb corporate rapacity by legislative enactments. The history of every bill introduced, to lessen the burdens of the people, is familiar to every one at all conversant with the subject. Is it true, as has often been charged, that legislative bodies are too strong numerically to formulate any fair scale of railroad rates? Are the legislative sessions too short to give members the time necessary to properly regulate and control the operations of railroads and other *quasi* public corporations? Can it be, as has often been strongly intimated, by persons presumably familiar with the facts, that beneficial legislation has more than once failed to become effective because men, whose votes were needed, have, in railroad parlance, suddenly been "convinced?" Whatever may be the cause, the fact remains, that railroad legislation in California, so far as it was intended to curb the monopolistic tendencies of all corporations of this character, has been utterly fruitless. The people of California, knowing this state of affairs, and desiring to rectify at least this one evil, through their chosen representatives, framed our present Constitution, and presented it for adoption. After a most bitter opposition, it was adopted by a very large majority, considering the means used in the effort to secure its rejection; and one result of its adoption was to create the present Board of Railroad Commissioners, and to endow it with whatever powers it possesses.

JURISDICTION OF THE BOARD.

The majority report contends strenuously in favor of the jurisdiction of this Board to regulate and control railroad corporations in this State, to the full extent of the constitutional grant for that purpose, and a large number of English and American authorities are quoted to sustain the position. To this portion of the report I give my most cordial assent, and only regret that the power has not, in my opinion, been exercised by the present Board to the extent which the abuses to be corrected most certainly warranted.

That the "power of the State" in the matter of regulation of the affairs of railroad and other transportation companies, is "no longer debatable," as stated in the majority report, is a proposition too well established, by a long line of adjudications, to call for any extended notice. Every Court in this country, State and Federal, has promulgated the doctrine until it has gone beyond the realms of controversy, so far as judicial decisions are concerned.

FEDERAL CORPORATIONS.

But certain railroad corporations, notably those which have received Federal aid in lands or bonds, have always combated the

doctrine so frequently announced. They claim to be Federal corporations, although organized under State laws. The principle contended for, seeming to be that the more aid received from the General Government, the less amenable are they to the jurisdiction of the States. The Central Pacific Railroad Company, a California corporation, deriving all of its powers to transact business as an artificial person from the people of this State, has never agreed to the doctrine of State control, and through its principal officers, even now, denies the power of this Board, or the representatives of the people in any other capacity, to regulate its affairs to any extent whatever; even denying the State's power to collect taxes. Judge Sanderson, the chief counselor of the Central Pacific Railroad Company, a lawyer of eminent ability, at one time a member of the Supreme Court, where he discharged his duties with eminent fairness and great ability, is, perhaps, the originator of the doctrine in this State, that "Federal corporations," so called, are above and beyond the control of State authority. So long ago as the year 1872, the Central Pacific Railroad Company declined to pay the taxes assessed against it in the County of Placer. Suit was brought in the District Court of the proper county, for the amount delinquent, and, after trial, judgment was rendered against the company. The case was appealed to the Supreme Court, and the briefs on file are able and exhaustive. Upon the part of the defendant it was contended, in the broadest way, that the Central Pacific Railroad Company, though organized under State laws, yet by accepting the terms of the various Acts of Congress concerning Pacific railroads, became a "Federal corporation," and, for this reason, was in nowise subject to State laws, and was exempt from the payment of taxes for State and county purposes. This doctrine was thoroughly overturned by our Supreme Court; the opinion in this case by Judge Wallace, concurred in by the whole Court, declaring that the Central Pacific Railroad was not a Federal corporation, and must pay its taxes as other corporations or individuals.

This case is reported in the 43 Cal. 398, and is entitled, "*The People of the State of California vs. The Central Pacific Railroad Company of California, and that certain real estate, situated in the County of Placer, and described as ninety-two and one fourth miles of railroad and telegraph line, situate in the County of Placer, and State of California, and known as the Central Pacific Railroad and Telegraph Line.*"

A Writ of Error was refused by our Supreme Court, but granted by telegraph from Washington, as I am informed by Judge Wallace, and the case has since been dismissed, presumably for the reason that the defendant had abandoned the doctrine contended for, or else feared an affirmation of the judgment of our State Court. This was, of course, before our present Constitution, since which time evasion of taxes has been sought, thus far successfully, by reason of the alleged protecting provisions of the Fourteenth Amendment, at one time thought to be a portion of the reconstruction system of Congress; but, if the new doctrine is to prevail, this was an error, and the prime object of that amendment was to prevent hostile legislation against delinquent corporations.

The case of San Francisco and North Pacific Railroad Company vs. The State Board of Equalization, is a decision rendered by our present Supreme Court. The case was brought to test the validity of an assessment of railroad property made by the State Board of Equalization, which assessment was resisted by the corporation defendant

on the ground that the assessment was virtually made in two counties, not by the County Assessors constitutionally elected, and that it was void for the reason that said assessment was in violation of that clause of the Fourteenth Amendment to the Constitution of the United States which provides that "no State shall deny to any person the equal protection of the laws."

The equalization made by the State Board was sustained in a lengthy and able opinion by Judge McKinstry, concurred in by Judges Ross and McKee.

STATE JURISDICTION STILL DENIED.

At several of the public sessions of the Commission held in San Francisco, Mr. Charles Crocker, at my request, appeared before the Board, without a subpoena, for the purpose of being questioned under oath touching matters concerning the roads with which he is identified, which roads, as is well known, virtually include all the railway lines in this State doing any considerable volume of business. Mr. Crocker was usually accompanied by one of the attorneys of the companies which he represented. Upon one occasion, he appeared before the Board together with Judge Sanderson, and for the purpose of ascertaining what were his views upon the subject, I asked him the direct question: Whether, as a matter of fact, he acknowledged the jurisdiction of our Board over railway corporations in this State? Mr. Crocker expressed no desire to evade the answer, but Judge Sanderson, before Mr. Crocker could reply, interposed an objection, which had the effect of preventing any response. My object in asking the question was, of course, to ascertain whether we were dealing with people who acknowledged our jurisdiction, and would obey our lawful orders, or whether we were merely enacting a solemn farce, which could possibly be productive of no good results; the failure to secure an affirmative answer, convinced me, then and there, that whatever our purpose, the ends to be attained by further questioning on this subject would be of no practical value, and I pursued the inquiry no further, being fully convinced that whenever any act of the Board ran counter to the wishes of the Central Pacific Railroad Company, it would be resisted in the Courts to the bitter end. I am still of the same opinion.

It has been frequently asserted, that the jurisdiction of this Board has been acknowledged or acquiesced in by the railroad corporations which have been thus far affected by its orders or schedules. This is a popular fallacy. Mr. A. N. Towne, in a communication addressed to the Board, *accepting, under protest*, the fare schedule adopted by the majority of the Board, which communication appears in and is commented upon in the majority report, thus enlightens us upon the scope of our duties and the extent of our powers:

To the honorable the Board of Railroad Commissioners of the State of California:

GENTLEMEN: On behalf of the Central Pacific Railroad Company I have the honor to acknowledge the receipt of a copy of the order adopted by your honorable body on the twenty-sixth day of June, ultimo, prescribing the rates of passenger fares on the system of railroads owned and leased by it.

The order establishes a maximum of six cents per mile on the desert and mountain portions of the system, and four cents per mile in the valley districts, and adopts all lower rates now charged by us. This official order works many radical changes in the rates of passenger transportation, and we respectfully enter this our solemn protest against its enforcement, and for grounds of protest beg leave to respectfully submit the following grounds of protest:

First—THE STATE OF CALIFORNIA, NEITHER THROUGH ITS LEGISLATURE NOR THROUGH YOU, ITS BOARD OF RAILROAD COMMISSIONERS, HAS JURISDICTION TO REGULATE FARES AND FREIGHTS UPON EITHER THE CENTRAL OR THE SOUTHERN PACIFIC RAILROAD. Both of these roads, as you are aware, have been constructed under Acts of Congress, the former under the Act of Congress of July 1, 1862, in relation to the Union and Central Pacific Railroads, the latter under two Acts of Congress, to wit: the Atlantic and Pacific Railroad Act of July 27, 1866, and the Act in relation to the Texas and Pacific Railway Company of March 3, 1871. By the eighteenth section of the first of said Acts Congress reserved to itself the power to regulate fares and freights upon the Central Pacific Railroad after the income of said road should exceed ten per cent upon the cost of construction, exclusive of the five per cent required to be paid by the company to the United States in liquidation of the loan made by the United States to it, and in the meantime authorized the company to establish its own rates.

By the thirteenth section of the second of said Acts it was provided that the Directors of the Southern Pacific Railroad Company might, from time to time, fix, determine, and regulate the fares, tolls, and charges to be received and paid for transportation of persons and property on its road or any part thereof.

The fifteenth section of the third and last of said Acts provided that the rates charged for carrying passengers and freight per mile shall not exceed prices which might be fixed by Congress for carrying passengers and freight on the Union Pacific and Central Pacific Railroads. And by the nineteenth section thereof it was further provided that no act of the company, nor any law of any State or Territory should impede, delay, or prevent the company from performing its obligations to the United States.

Thus it appears that Congress has reserved to itself full and complete jurisdiction over the regulations of fares and freights upon both the roads in question, and has already, in a measure, exercised such jurisdiction. To this jurisdiction, on the part of the National Government, the State of California, by solemn acts of its legislative body, has fully assented, if such assent was necessary, which we deny.

Said Acts were dictated by a wise policy on the part of Congress. The purpose of Congress in the passage of said Acts was to promote the settlement and development of the country, and to stimulate and encourage the construction of lines of communication between all parts of the national domain. The action proposed by you, and against which we protest, is at variance with this broader policy of the National Government; indeed it will prove, if enforced, the reversal of that policy, by arresting the construction of transportation lines, and thereby retarding the development of the national resources and delaying the process of civilization.

Can any language indicate more clearly than does this, that whenever this Board shall, in the exercise of its legitimate powers, adopt any schedule of fares or freight not acceptable to the railroad companies which Mr. Towne represents, that its enforcement will be resisted to the last extremity. And does it not also suggest the advisability of the immediate adoption of some *real reforms* in railroad management, to the end that the legal questions involved may speedily come before the proper tribunals for final adjustment. I am led to these reflections for the reason that I believe the schedules already in force, by order of this Board, are entirely acceptable to the railroad companies to which they apply; or in other words, as I shall more fully explain and demonstrate hereafter, that the reduction made by said schedules are so immaterial and inconsequential, that the Central Pacific Railroad Company do not care to waste time in opposing them, save by means of *bogus* protests, not intended to influence the Board, but to make a show of apparent fairness to a large class of patrons of the road, who are firm in their belief that for many years they have been the victims of extortion and discrimination, practiced under a method of doing business controlled solely by that pernicious maxim so confidently put forth, of charging "all the traffic will bear." I should forbear to say anything further upon the question of the right of the State to regulate these corporations, subsidized by the Federal Government, but for the fact that I believe that when the regulation is attempted in a way distasteful to the companies it will be the fruitful source of litigation and strife. In my judgment the sooner these questions are brought up and litigated, the better will it be for all parties concerned.

In addition to what is contained in the majority report, and what

I have said herein upon the subject, I beg leave to call to your attention one or two extracts from a recent article in the *North American Review* of September, 1883. The writer is Judge T. M. Cooley, an author quoted with approval in the majority report. The title of the article is:

STATE REGULATION OF CORPORATE PROFITS.

At the time when the Federal Constitution was adopted, municipal government in America was a very simple affair, and was managed with ease and economy through local officers, who provided for the making and repairing of roads, looked after disorderly characters, abated local nuisances, and levied rates for the few and simple public needs. When the growing population of a particular locality appeared to need larger powers of local government, the Legislature granted them, but they often involved little more than the holding of fairs as a means of building up local trade, the institution of a local Court for the trial of petty cases, a few simple precautions against fires, the employment of watchmen, provision for the streets, and authority to levy taxes, under very narrow restrictions to meet the corporate expenses for these purposes. State Government was more complicated, but it was vastly less so than it has since become.

Changes, the most of which have taken place within fifty years, have made everything different. The railroad has come, for good and for evil, and has displaced not only the old stage-coach, but to a large extent also the use for trade and travel of the common roads. The State and its municipalities provide the common highway, and keep it in repair, and it seems, therefore, to be within their authority, if not their duty, now that the railway has become the chief convenience of travel and transportation, to provide that also.

The learned Judge, upon the question of legislative grants of corporate franchises, uses this significant language:

But to grant such a franchise is to give a special privilege, which presumably has pecuniary value. It is, therefore, to prefer some citizens, who are made the recipients of the grant, over citizens in general; and though this is unavoidable, it is in a sense invidious. In many cases, also, the privilege from its nature must be exclusive; and we are to have persons carrying on a business as a public agency, with the public as a customer, but without the competition which, in the case of ordinary business, is supposed to be the sole protection against extortionate demands. We thus have the odious features of monopoly as the result of a grant of a public privilege; and this will be obnoxious in proportion to the opportunity it gives for unjust exactions, and to the neglect on the part of the State to provide against them.

But, suppose the State, when granting the privilege, makes no provision against an extortionate use of it for the purposes of private gain, is it powerless to do so afterward? No question more important than this has hitherto demanded the attention of the country. If the State may grant irrevocable and unchangeable franchises of all sorts, we may find, after a few years of foolish and corrupt rule, that it has bartered away a large part of its ability to be useful to the people, and that, instead of existing for the equal and common good of all, it has built up privileged classes to whom the functions of government have been granted or pledged. It would be easy to imagine a state of things that might become intolerable.

When the force, effect, or binding nature of a public grant, and especially of a corporate grant, is in question, we turn spontaneously to the Dartmouth College case for the light and the law that must guide and govern us. That case has tended to fix in the public mind the impression that whatever can be obtained in the form of a legislative grant has a property character affixed to it, which entitles it to common protection with the earnings of industry and the legitimate accumulations of capital, and that it has also something of the sacredness supposed to inhere in public compacts and treaties, and must be specially guarded for that reason. The decision has been extolled beyond measure for its preëminent wisdom and beneficence; and it has been assumed that without it the protection of contracts would have been impossible, and especially that the prodigious results of corporate organization, which has done so much to enrich and improve the country, could never have been attained. But if the Dartmouth College case brought blessings, it also created alarm; the corporations protected by it acquired a greatness, wealth, and power which the political instincts of the people made them distrust and fear; and in recent Constitution-making they have given distinct expression to the belief that a Legislature with authority to tamper with corporate powers is less to be feared than a Legislature with authority to grant irrevocable franchises and privileges. The revised State Constitutions of recent date have, therefore, taken from the legislative department the power to grant corporate charters, except subject to the unalterable condition, as a part of the contract, that the charter may be altered or repealed in the legislative discretion; and that condition, in the case of nearly all recent corporations, is a part of the law of their being. It has been imposed under the influence of a fear that without it not only were corporations likely to become too powerful for effectual control, but also that the State was in danger of stripping itself for their benefit of essential powers.

There are still some charters, however, that, having been granted without the condition, are not subject to repeal or amendment at the legislative will; there are also important franchises in the hands of unincorporated persons. And in examining the State power to regulate charges,

it seems necessary to consider it first, as it would exist at the common law; second, under charters not repealable or amendable; and, third, under charters which are subject to legislative control.

First—Of the corporations serving public ends, the most important are railways. These are chartered that they may establish the business of carrying for hire the property and the persons of those who may desire that service. This is a business well known to the common law, and has long been recognized as having a semi-public character, which made it an exception to private business in general. The law permitted persons to assume the character of common carriers only upon certain conditions, one of which was that they should carry property at reasonable rates;* and, in the absence of special bargain, the law, when necessary, undertook to determine what might be reasonable rates under the circumstances. But, subject to these and a few other conditions, any one might offer his services as a public carrier; he needed no State permission for the purpose. And no doubt he might build a railroad and operate it in his business, if he could purchase for his track a right of way; but he would operate it under the same common law conditions which other public carriers must observe. He would therefore be under the restriction that his charges should be reasonable. But legislative permission to build and operate a railroad is commonly a necessary requisite. Highways must be crossed and public places intersected or occupied; and a railroad upon any of these, without permission of the State, would be a public nuisance, and subject as such to indictment and removal. It becomes necessary, also, to resort to the eminent domain to force sales of lands for right of way by persons who will not voluntarily part with them, or who take advantage of the circumstances to demand exorbitant prices. But in addition to other impediments to individual construction, the capital required for the purpose is so great that only the coöperation of many persons can secure it; and the safe and convenient method of coöperation is under corporate forms. We therefore, of necessity, have charters for railway companies.

As to the principles upon which this regulation should be made, and the various facts which may be taken into consideration in performing that duty, Judge Cooley says:

We have, then, railway companies existing as common carriers, and subject to the common law obligation to make only reasonable charges. But what are reasonable charges? Reasonable prices in general are such prices as are determined by demand and competition; and they do not necessarily lose their character as reasonable, because under the pressure of demand and in the absence of competition, they become very profitable. If, therefore, a railway corporation is to be regarded as occupying in all respects the position of a common law carrier, large profits will not necessarily determine its charges to be unreasonable. *But when the company receives from the State special privileges and grants of power, on the understanding that these are conferred in the public interest and to subserve public ends, it is not by any means certain that its profits may not justly be used as a test of the reasonableness of its charges. The charter is granted for the mutual benefit of the State and the corporators, and while it contemplates reasonable returns to the latter on their investment, it cannot fairly be understood to contemplate anything more.* In determining what are such terms all the risks to which the investment is subject are to be taken into account; and it is obvious that these are much greater than the risks which attend the loaning of money on security. But charges can only be regulated for the future; and this must necessarily be done, either by the company itself or by the State, upon estimates of the business likely to be done, and its cost. That the company could not be exclusive judge in doing this, even at common law, has already been seen; and as no third power can intervene, except by mutual consent, it seems to follow of necessity that the State may limit profits as well as charges. The judicial decisions go to this extent, that when the State establishes a maximum of charges, these charges are to be deemed *prima facie* at least reasonable.†

A PRINCIPLE OF ACTION STATED.

The italics in this extract are my own. The principle stated is one upon which I have consistently acted, and which I have persistently sought to establish as a basis of action by the Board, since entering upon the discharge of my official duties. I believe it to be just and equitable. That "special privileges and grants of power," together with the donation of immense land grants, together with governmental aid in the shape of Government bonds, with interest guaran-

* *Harris vs. Packwood*, 3 Taunton, 264; *Oppenheim vs. Russell*, 3 Bos. & Pul. 42; *Ashmole vs. Wainwright*, 2 Q. B. 837; *Fitchburg R. Co. vs. Gage*, 12 Gray, 395; *McDuffee vs. Railroad Co.*, 52 N. H. 430; *Johnston vs. Railroad Co.*, 10 Fla. 623; *Holford vs. Adams*, 2 Duer, 471; *Streeter vs. Railroad Co.*, 45 Wis. 383.

† *The Granger Cases*, 94 U. S. Reports, 155, 164, 179, 180, 181; *Shields vs. Ohio*, 95 U. S. Reports, 319. As to the elements of reasonable charges, see *Pickford vs. Grand Junction R. Co.*, 10 Mee. & W. 399.

teed, are facts which should be taken into consideration in fixing rates of fares and freights, seems to me to be a proposition which is established by the mere statement of it, and one which no argument could strengthen. Yet these principles have been frequently disputed by the majority of this Board, and in their report they are distinctly and flatly repudiated as worthless, for Mr. Carpenter, in his fifth subdivision or statement of governing principles acted upon by Mr. Humphreys and himself, thus states his views:

Fifth—This is the rule of compensation for Government service incorporated in the Acts of Congress to aid the construction of the Central Pacific and other overland roads, and estops the Government and *a fortiori* all other parties, from discriminating against them in payments for transportation thereon.

In commenting upon the action of a former Board, Mr. Carpenter thus expresses himself :

It includes the established tests, not themselves disputable, by which all Courts and Commissions, State and National, are necessarily governed. Without preference of person or corporation, owning and operating railroads, they apply to all alike, and relate to service and not to subsidies; to the continuing basis of charges for fares and freights, and not to the financial backing nominated in Government bonds; to the present condition of existing railroads, and not to the eventful epoc when gigantic forces of peace and war conspired to build them. Opposed to these principles and conclusions of law, there is only the unreconciled afterthought that Government loans and donations for the construction of the Central Pacific and other overland roads were or might have been intended as offsets to charges for their operation.

The excessive floridity of this extract slightly clouds its meaning, and the business principles stated are somewhat obscured by the rhetorical flourishes under which they are buried. If I understand it, however, it means what I have always understood from the public discussions held by Mr. Carpenter and myself, that the "majority of one" will not consider the fact that the Central Pacific Railroad was largely aided by the Government, if not entirely built by the means provided by it, when this Board is fixing rates of freights and fares to be charged by that corporation. From this conclusion I most emphatically dissent. If this principle is eliminated from the inquiry, the relief to be afforded by this, or any other Railroad Commission in this State, would be of so futile a character as to scarcely justify the expense of keeping so costly a governmental appendage in existence. Judge Cooley certainly had these land grant and subsidized railroads in mind, when he says that "*the charter is granted for the mutual benefit of the State and the corporators; and while it contemplates reasonable returns to the latter on their investment, it cannot be fairly understood to contemplate anything more.*" That the magnificent endowment of the Central Pacific Railroad by the Federal Government, and its acceptance of the same, together with the princely liberality of the State of California, and several of her counties, were "intended as offsets to the charges for their operation," was certainly contemplated by the donors, whatever may have been the idea of the recipients of these bounties. That these gratuities were intended for the sole use and benefit of the individual incorporators, is a proposition boldly advanced and plausibly maintained by the author of the majority report, if I correctly understand the language quoted from that document. It is a principle of action to which I can never give my assent, for all contemporary legislative history shows the converse to be true.

HISTORY OF PACIFIC ROADS.

When "gigantic forces of peace and war conspired to build" these overland roads (which is the history and mode of their construction according to the majority report), the individuals who now control one of them, and who have accumulated enormous wealth by reason of that control, were all men of moderate means, but of indomitable energy and will. The California corporation which they formed, under the various Acts of Congress relating to these matters, was authorized to build a certain portion of the line, and for so doing was to receive, and did receive, aid, in the shape of a land grant and bonds.

The land grant of the Central Pacific Railroad which it has actually secured, amounted to *twelve million acres*. They were aided with the gift of bonds, at that time constituting a first mortgage on the road, to the extent of *twenty-seven million dollars*. Subsequently, it was represented to the Congress of the United States, that the aid granted, together with the private fortunes of the incorporators, was insufficient to complete the line. Congress allowed the Central Pacific Railroad Company to issue its own bonds, in an amount equal to the Government bonds which had been loaned. It was claimed that these bonds could not be sold, even at a sacrifice, for the reason that the Government was the holder of the first mortgage or lien upon the road. Capitalists, in this country and Europe, could not be found to purchase the second mortgage bonds of an enterprise the final success of which, to say the least, at that time, was doubtful. To relieve the projectors and builders of the Central Pacific Railroad from a financial dilemma which threatened to prevent, or, at least, greatly delay the completion of the road, Congress, with a generosity in giving away trust securities hitherto unparalleled in any legislation with which I am familiar, gave up the Government's first mortgage on the road, taking a second mortgage as security for the Government loan of twenty-seven million dollars, and allowing the company's bonds to be secured by a first mortgage upon the property. Even the funds raised by the sale of both the Government and company bonds, together with a large sum secured by the sale of *ten million dollars* of land grant bonds, we have been told by the officers of the company, did not nearly suffice to pay for building and equipping the road, constructed, as it mainly was, by the Contract and Finance Company, an institution which is generally supposed to have lost nothing by the contracts which it had taken. Where the many millions, said to be needed to complete the road, were obtained, is a piece of information which the company's reports fail to show, and diligent inquiry in other directions has not elicited the desired information. It did not come from the sale of stock, and was not furnished from the private fortunes of the owners. I call your attention to these facts at this time (I shall recur to them again in another connection), for the purpose of showing, if I can, the fallacy of the principle contended for and acted upon by the majority of this Board, that they should not be taken into account when the fixing of "rates" and "rates of charge" for these roads is under consideration. I do not contend, nor have I ever done so, in discussions in the Board, or elsewhere, that these are the only considerations which should govern the Board in its action towards these roads. Most certainly the

interest upon the bonds must be earned and paid, and a fair profit to the owners; but is it right that immense private fortunes should be earned every year besides. In brief, then, the idea I intend to convey is, that subsidized railroads, built upon the credit of the Government mainly, should be regulated upon somewhat different principles than those applying to roads which are merely chartered by the State, but constructed entirely by private capital. And the fact that the main lines in California are all subsidized renders the duties of this Commission more onerous than, perhaps, those of any other which has yet grappled with the subject of railroad regulation.

Mr. Carpenter, in that portion of his report which is devoted to a citation of authorities intended to sustain the position taken by the majority, quotes from an Act of Congress granting certain favors and imposing certain duties upon subsidized roads. Regarding the compensation to be paid by the Government for service performed for it by subsidized roads, the Act, as quoted in the majority report, says it shall be "at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service."

Mr. Carpenter's report, commenting upon this language, is as follows:

Here again is the common law rule of service, and for the same kind of service the same compensation. This would be plain enough without the express limitation to amounts paid to private parties whose rights are not affected by anything in the contract. And in an opinion upon the clause quoted, the Supreme Court of the United States has said: "The compensation at fair and reasonable rates must be considered upon all the facts material to the issue, not to exceed the amount paid by private parties for the same kind of service." (*Union Pacific Railroad Company vs. The United States*, 14 Otto, 667.)

Nothing, therefore, can be more evident than that the brilliant conception of reversionary bounties, and loans payable to the Government, but due to everybody, and subsidies that are a perpetual surcharge of fares and freights, was inspired by the wisdom that comes after the fact.

The extracts just quoted from the Act of Congress convey to my mind a meaning entirely different from that placed upon them by the author of the majority report. It is perfectly true that the Act was guarded to the extent that subsidized roads, in their dealings with the Government, were limited to a rate of charge not greater than that exacted from private individuals. Thus far the Government protected itself and no farther, for it did not pretend to fix the rate of charges specifically for all time, but simply said that they should be "fair and reasonable," leaving the construction of those terms to whatever agency should be intrusted with the power of defining what was "fair" and what was "reasonable" in each particular case. In this State that agency is the Board of Railroad Commissioners.

It was undoubtedly assumed that the States would regulate the charges so far as they could, and that the limit thus fixed, so far as the service was the same, would apply to the Government in its employment of the roads.

The Congress of the United States undoubtedly has the power to fix the rates for overland traffic, if it is inter-State commerce, under the Twelfth Amendment to the Constitution of the United States. Already a bill has been introduced by Mr. Sumner, of California, limiting the rates of fare upon the Union and Central Pacific Railroads to the sum of *three* cents per mile, which is ample; this will undoubtedly be followed by another concerning freight rates. If Congress should fail to act upon these measures, a National Commission, with full power to control the whole subject of through rates

between different States, and also to apportion rates between the roads themselves, would be a solution of the difficulty. Legislation of this character is imperatively needed, and without it State authority, however honestly exercised by those to whom it is intrusted, is powerless to correct many of the abuses which now exist.

BRIEF HISTORY OF CALIFORNIA RAILROADS.

The appendix to the report of the majority of this Commission, contains a large number of documents, but not one third of the number which have been presented to the Board during its brief year of existence. Some of these papers are valuable for the information they contain, others are utterly worthless for practical purposes, whilst others still are curious by comparison with documents relating to Central Pacific Railroad matters presented at a time when the people were clamorous for the completion of the Pacific Railroad, and lavishly generous to that corporation. It is impossible at this time to name the person who is entitled to the credit of having originated the idea of building a Pacific Railroad. The Treaty of Guadalupe Hidalgo, which ended the Mexican war and resulted, among other things, in the acquisition of the territory now contained in the State of California, was concluded on the second day of February, in the year 1848. About the same time, to wit: on the nineteenth day of January, A. D. 1848, the discovery of gold induced a flood of immigration to California, which in less than a year so increased the population, that the young and lusty Territory was clamoring at the doors of Congress for admission, as one of the sisterhood of States, into the Federal Union. The old pioneers of early days, who had a vivid recollection of the hardships encountered and perils endured in the long and weary march across the plains, or the equally perilous route *via* Cape Horn, and the shorter but no less dangerous journey by the Isthmus of Panama or Nicaragua, were constantly dreaming of the day when a railroad across the continent should be completed, but few of them had any idea of living to witness the realization of their hopes. For many years those who talked of the feasibility of such a road were deemed mere theorizers. It had always been contended that such an undertaking could only be successfully finished by the General Government, private capital and individual effort being rightly deemed (save by a few whom events have shown to have been mistaken,) inadequate to inaugurate, much less to complete, the work. As early as the month of January, 1857, Theodore D. Judah, Esquire, a practical civil engineer, then a resident of San Francisco, and subsequently one of the incorporators of the Central Pacific Railroad Company, and its Chief Engineer, wrote and published a lengthy pamphlet entitled "A Practical Plan for Building the Pacific Railroad." As containing the first proposal for the completion of such a work, I quote the following extract:

The project for construction of a great railroad through the United States of America, connecting the Atlantic with the Pacific Ocean, has been in agitation for over fifteen years. It is the most magnificent project ever conceived. It is an enterprise more important in its bearings and results to the people of the United States than any other project involving an expenditure of an equal amount of capital. It connects these two great oceans. It is an indissoluble bond of union between the populous States of the East and the undeveloped regions of the fruitful West. It is a highway which leads to peace and future prosperity. An iron bond for the perpetuation of the Union and independence which we now enjoy. Many projects for the prosecution of this enterprise have been presented. Various schemes for the fulfillment of these

projects have been devised. Our wisest statesmen, most experienced politicians, scientific engineers, and shrewdest speculators have each and all discussed the subject in nearly every point of view, and given the results of their wisdom and experience to the world. Yet their projects have proved abortive. Their schemes have failed. The world has listened with attentive ears to the words of eloquence and wisdom from the lips of great and wise men. Yet this project has not been consummated. The road has not been finished. It has not been begun. Its practicability has not been established. A survey has not been made. It has simply been made the subject of reconnoissance.

Still, during the last twenty-five years, twenty-five thousand miles of railroad have been constructed in the United States, and a thousand million of dollars expended thereon. This road is but two thousand miles in length, and its cost not over say \$150,000,000. As many as eight or ten great avenues of transit between the present East and West (three of which, in the State of New York alone, cost one hundred million of dollars) have been constructed. This highway, the greatest and most important of them all, remains unbuilt; it may be said unsurveyed, simply reconnoitered. Why is this? Its popularity is universal. Its importance admitted. Its practicability believed in. Its profitableness unquestioned. Firstly, it is because these projects are speculative in their nature, and the people are disposed to look with distrust upon grand speculations; secondly, there are different routes, advocated by diverse interest, each eager that the road be built to subserve its own particular interest, but unwilling to make common cause upon a common route; thirdly, from the lack of confidence in private capitalists, dissuading them from investing in any project through which they cannot see their way clear.

This plan assumes to obviate these objections, and firstly, to build the Pacific Railroad; secondly, to accomplish the same in ten years; thirdly, to raise the capital therefor.

And suggests practical means for the accomplishment of its object by means of private capital. It assumes, that without the confidence of the people, the road cannot be built. Therefore, it proposes to divest the project of its speculative features, and thereby endeavor to inspire the public with confidence. To do this, therefore, *its direction and destiny must not be controlled by a grand stock jobbing company, whose united aggregate wealth will not pay one per cent upon their magnificent subscriptions.*

Secondly—To divest it of the difficulties consequent upon sectional prejudices, it is proposed to ask aid of no kind whatever from the General or State Government, but to combine the interest of either the Northern or Southern States, upon their favorite route; to ask for private capital, and confine the sphere of action entirely to one or the other of these sections. This insures unity of action. The experience of all legislation in this country upon a subject of general interest, but arousing sectional prejudices, shows conclusively that the fate of a project of this nature, dependent upon the general will, is most likely to prove an unhappy one. No one doubts that a liberal appropriation of money or public lands by the General Government ought to insure the construction of this railroad, but the proposition carries the elements of its destruction with it; it is the house divided against itself; it cannot be done until the route is defined; and, if defined, the opposing interest is powerful enough to defeat it.

As is well known, Mr. Judah's plan of building the road, by means of private capital, was eventually abandoned, and Government aid was invoked and obtained. Whether he intended to make a prophecy or convey a warning by the use of the following language, I have no means of determining: "*To do this*" (i. e., *build the road*), "*therefore, its direction and destiny must not be controlled by a grand stock jobbing company, whose united aggregate wealth will not pay one per cent upon their magnificent subscriptions.*" This was written before Mr. Judah became associated with Governor Stanford and Messrs. Crocker, Huntington, and Hopkins.

Early in the year 1859, the Senate and Assembly of the State of California passed a concurrent resolution upon the subject of a "continental railroad from the Pacific Ocean to the Mississippi River," with a request that the Governor of the State send copies of the same to the Governors of Oregon, Washington, and Arizona Territories. With this request the Governor complied, and, in the month of October of the same year, 1859, there assembled in the City of San Francisco, in accord with the suggestion of the resolution, a "Pacific Railroad Convention," composed of delegates from the States of California and Oregon, and the Territory of Washington. It remained in session for five days. Hon. John Bidwell was its President, and William Rabe its Secretary. Among its prominent members were Theodore D. Judah, since deceased, Hon. J. B. Crockett, William H. Rhodes

("Caxton"), Hon. J. G. McCallum, D. O. Mills, Henry Gerke, Hon. L. Archer, since prominent as an advocate of legislation intended to regulate railroads in California, and now a resident of San José; Hon. John Conness was also a member, as likewise L. A. Booth. The name of no man now prominent in railroad affairs in California appears as a member of that Convention, or as interested in its deliberations, except that of R. P. Hammond, one of the present Police Commissioners of San Francisco, and officially connected with railroad matters. The deliberations of this Convention culminated in the preparation and presentation of a memorial to Congress, setting forth the advantages of the contemplated road, and suggesting a plan of subsidizing such a line, which has been substantially followed in all subsequent legislation upon the subject. The three first headings of that memorial are as follows:

First—That the Government aid the construction of the Continental Railroad across the territory of the United States by the guaranty by the Government of the payment of interest, not exceeding five per centum per annum during twenty years, on the bonds which may be issued by the company constructing the said road, representing a sum not exceeding the actual cost of the road.

Second—That the Government grant liberally from the public lands of the territory over which the said road shall pass, to such company or companies as shall construct the same from the western frontier of the Atlantic States to the eastern frontier of the State of California.

Third—That in such grant of lands, the Government offer a *bonus*, conditional, to wit: If the company construct the said road, and put the same in complete operation within five years from the date of the contract, grant to the company alternate sections *thirty* miles deep on each side of the road; but if the company occupy a longer period of time in its construction, grant them only *ten* sections deep.

ORGANIZATION OF CENTRAL PACIFIC RAILROAD COMPANY.

On the twentieth of May, 1861, there was passed by the Legislature, and approved by the Governor, of the State of California, an Act with the comprehensive title of "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto." Under this Act and the general incorporation law of 1850, the Central Pacific Railroad Company of California was incorporated. The Act of 1861 provided, among other things, the way in which the State and counties and cities could grant subsidies to railroad companies.

The "Articles of Association," as they were termed, under which the Central Pacific was first organized, were filed in the office of the Secretary of State, at Sacramento, on the twenty-eighth day of June, 1861. The "names of the nine Directors who were to manage the concerns of the company," inserted in the articles, were as follows: Leland Stanford, Charles Crocker, James Bailey, Theodore D. Judah, L. A. Booth, C. P. Huntington, and Mark Hopkins, of Sacramento City, D. W. Strong, of Dutch Flat, and Charles Marsh, of Nevada. The capital stock of the company was nominally \$8,500,000, "divided into shares of one hundred dollars each." There were six individuals who subscribed for one hundred and fifty shares each, and their names were: Leland Stanford, Mark Hopkins, James Bailey, Charles Crocker, C. P. Huntington, and Theodore D. Judah, all put down from Sacramento. None of the other subscribers to the stock took more than fifty shares each, and the majority of them were content with five and ten shares. Three of the gentlemen who had subscribed for the larger blocks filed with the Secretary of State the following affidavit on the day the document bears date:

STATE OF CALIFORNIA,
CITY AND COUNTY OF SACRAMENTO. } ss.

Be it remembered, that on this twenty-seventh day of June, 1861, personally appeared before the undersigned, a Notary Public in and for said city and county, Leland Stanford, Mark Hopkins, and C. P. Huntington, three of the Directors of the within named "Central Pacific Railroad Company of California," and being by me duly sworn, say: That the stock to the amount of at least one thousand dollars for every mile of the railroad intended to be built by said company, to wit: An amount of stock, exceeding one hundred and fifteen thousand dollars, has been in good faith subscribed by the members of said company, and that ten per cent on the amount of stock subscribed, as aforesaid, has been actually, and in good faith, paid in cash to Mark Hopkins, the Treasurer appointed by the Directors named in the within articles of association, and that the subscribers to said articles of association are known by some one of said affiants to be subscribers thereto, and to be the persons so represented.

LELAND STANFORD.
MARK HOPKINS.
C. P. HUNTINGTON.

I hereby certify, that the foregoing affidavit was duly subscribed and sworn to by said Leland Stanford, Mark Hopkins, and C. P. Huntington by and before me the day and year aforesaid. In testimony whereof I have hereunto set my hand and official seal this twenty-seventh day of June, A. D. 1861.

[SEAL.]

ELIJAH SWIFT,
Notary Public.

It will be observed that the "amount of the investment" of private capital, by the present owners of the Central Pacific Railroad Company, was rather small by comparison with the magnitude of the undertaking in which they were about to engage. This organization was completed thus early to enable the California company to take advantage of an Act of Congress subsequently passed, by the terms of which Acts, and the Acts supplemental thereto and amendatory thereof, the grants of lands and bonds to the Union and Central Pacific Railroads were made.

Prior to the passage of the first Act of Congress relating to Pacific railways, the civil war had commenced. All of the Southern States had passed ordinances of secession, and were represented in the Congress of the Confederate States, and some of the Border States had Representatives in the Congress of the United States and also in that of the Southern Confederacy. The immediate commencement and speedy completion of the Pacific railroads, was then strongly and favorably urged, under the convincing plea of "military necessity."

During this period (between the time of the organization of the Central Pacific Railroad Company and the passage of the first Act of Congress granting right of way and subsidies), the projectors of both branches of the continental railway were busy urging their schemes in Washington. Theodore D. Judah spent many months at the National Capital, urging, with all his skill, the immediate passage of the necessary Congressional enactments. Prior to this time he had made preliminary surveys, in person, of the proposed route or routes from Sacramento to the California State line, and beyond, and was prepared, therefore, to demonstrate to the satisfaction of Congress the feasibility of the work which he was so plausibly urging the Government to assist in commencing. At this time, Mr. Judah was also one of the incorporators and directors of the Central Pacific Railroad Company, and was its Chief Engineer. In a pamphlet of thirty pages, printed by H. S. Crocker & Co. in Sacramento, in September, 1862, addressed to the "President and Directors of the Central Pacific Railroad Company of California," Mr. Judah gives an account of his "Operations in the Atlantic States." The subject-matter of this pam-

phlet is a full and complete account of Mr. Judah's work before Congress, in support of his road, which was now to be built at the expense of the Government and not by "private capital," as was originally proposed by himself. Mr. Judah's report is an interesting account of long, arduous, and efficient service in the cause of this corporation, and in it is contained a testimonial to his industry and ability in furtherance of his design, to which is appended the signatures of *forty-seven Congressmen, seventeen Senators*, and the Secretary of the Senate, Hon. John W. Forney. A perusal of the names appended to the testimonial is interesting at this time. First on the list of Congressmen appears the name of R. Franchot, then a member of Congress from New York. This is the same gentleman who was subsequently the lobby agent of the company in Washington, and he is, as far as I have observed, about the only person spoken well of by Mr. Huntington in his recently published correspondence. Erastus Corning, Schuyler Colfax, Thaddeus Stevens, William Windom, W. A. Wheeler, Frank Blair, and Elihu B. Washburn, all members of the lower House of Congress at that time, likewise indorsed Mr. Judah's faithfulness and efficiency. So, likewise, did Hon. T. G. Phelps of California, and Geo. W. Julian of Indiana, since so pronounced an advocate of the policy of retaining the public lands for actual settlers.

Among the Senators whose names appear upon the testimonial of Mr. Judah are those of B. F. Wade, H. B. Anthony, Jas. A. McDougall, Milton S. Latham, Edgar Cowan, L. M. Morrill, and Lyman Trumbull. The appearance of the names of such men as these, all of whom understood Mr. Judah's plan for a people's road, not to be controlled as he expresses it "by a grand stock-jobbing company whose united aggregate wealth will not pay one per cent upon their magnificent subscriptions," is evidence of the fact that in their inception at least, the Continental roads were viewed as a national highway, in which the Government had an interest, and over which it proposed to exercise control. Facts like these are conclusive to my mind in favor of the policy of at least taking them into consideration, when fixing "rates" and "rates of charge" upon the roads to which they relate. They are doubtless as familiar to my associates as to myself, and I regret that they have not been as convincing to them as they have been to me.

During the many trips of Mr. Judah to Washington he was materially assisted by the Hon. A. A. Sargent, then a member of Congress from California. On the thirty-first day of January, 1862, this gentleman delivered a speech in Congress in favor of subsidizing these roads, which was printed and circulated at the time, in furtherance of the enterprise, under the following title:

**"SPEECH OF HON. AARON A. SARGENT, OF CALIFORNIA, ON THE
PACIFIC RAILROAD AS A MILITARY NECESSITY."**

It was carefully prepared, after a full examination of Mr. Judah's reports of preliminary surveys and estimated cost, and I make from it the following extracts:

The bill which I have had the honor to introduce in this House contemplates the issuance by the United States of bonds to be loaned to the company at a fixed amount per mile, being about one half the contemplated cost of the road, upon the completion of continuous sections of twenty-five and fifty miles; also, a grant of alternate sections of the public lands for six miles upon either side of the road.

Although I have long been in favor of a different plan or mode of granting aid, yet, inasmuch as the scheme I have named appears to have been the one adopted by the committee at their last or thirty-sixth session, it having been thoroughly discussed and finally approved by the House, I felt almost instructed to conform to the thus expressed ideas of the House upon the subject, and accordingly introduced a bill in conformity thereto. Under that bill, I think it can be successfully demonstrated that no great additional burden will be laid on the treasury of the United States for many years to come. As before stated, the bill provides that upon the completion of sections of a certain length, the United States shall issue their bonds at a certain rate per mile to the company; also issue to them the lands appertaining to such completed section or division. At the rates proposed, it is likely that the *total* amount of bonds issued will be about sixty millions of dollars. But it must be borne in mind that those bonds are not to be issued at once. At least one year after the passage of the bill will be consumed in making the necessary surveys and in preparing for work, and it will not be until at the expiration of the second year that any bonds will be called for. If we assume the length of the road to be two thousand miles, to be completed in ten years, this will require the completion of an average length of two hundred miles per year. If we assume the whole cost to be sixty millions, then there will be required the issuance of six millions of dollars per year, the interest on which, at six per cent, will be three hundred and sixty thousand dollars per year.

Mr. Sargent, therefore, contemplated that the aid granted in bonds would about pay half the costs of construction of the whole continental road, the length of which he estimated at two thousand miles from Council Bluffs, Iowa, to Sacramento, California. The amount of bonds, therefore, proposed to be issued, was \$60,000,000, "about one half the contemplated cost of the road," which sum multiplied by two would make \$120,000,000 as the entire cost.

At a subsequent time, on the ninth day of April, 1862, Mr. Sargent delivered another speech in the House of Representatives during the discussion of "House Bill 364," which was entitled "An Act to aid in constructing a railroad and telegraph line from the Missouri River to the Pacific Ocean," etc., being the same bill subsequently passed, and under which and its amendments these roads were built. Mr. Sargent then expressed himself as follows:

A company has been organized in my State, and a railroad survey made under its auspices at great cost, entirely across the Sierra Nevadas, which successfully overcomes the difficulties of this portion of the route. As this company is named in the bill as one of the agents to effect the will of the Government, it may be expected that I shall state what I know of its character. The company is incorporated under the name of the Central Pacific Railroad Company of California, and is composed of some of the wealthiest, most respectable, and reliable citizens of the State, who have taken hold of this matter with vigor and energy, and who are ready to embark their own means in the enterprise, providing the assistance of the Government can be had. Having already surveyed their portion of the line through the State, they are prepared to commence immediately the work of construction, having, as it were, already commenced and performed nearly two years' work in preparing the line for construction, which labor and time would have been requisite after the passage of this bill before the work could have been commenced, as no portion of the line could have been worked until the *whole route* across the Sierra Nevadas had been established and found practicable. The route is located upon a continuous divide which reaches to the summit without being broken by cross ravines or rivers.

Mr. Judah's estimate of the whole cost of the Union and Central Pacific Roads, which estimates were made after preliminary surveys made by himself, and likewise from estimates made by Army Engineers under direction of the Government, was somewhat less than Mr. Sargent's, but the latter was doubtless giving the *highest possible estimated cost* obtainable from authentic sources.

In his report of the cost in a pamphlet entitled "*Report of the CHIEF ENGINEER on the preliminary survey and cost of construction of the CENTRAL PACIFIC RAILROAD of California across the Sierra Nevada Mountains from Sacramento to the eastern boundary of California,*" Mr. Judah gives some interesting facts and figures. It is dated October 1, 1861, and addressed to "The President and Directors of the Central Pacific Railroad Company of California," and opens as follows:

"Gentlemen: Agreeably to your instructions I have completed the preliminary survey of a railroad across the Sierra Nevada Mountains, from the City of Sacramento to a point on the Truckee River at the eastern base of the mountains; the results of which confirm the facts established by the barometrical reconnoissance made last Fall." It appears from this that the work had been twice gone over and the results were doubtless reliable. In this report Mr. Judah gives a complete summary of grades, curves, tunnels, culverts, bridges, and everything entering into the cost of construction, also tables of costs of other expensive works in the United States, Europe, and India, and likewise takes into account the war prices of the materials to be used. The following is his recapitulation of the mileage and entire cost:

Recapitulation and Estimate of Entire Cost of Pacific Railroad Line, taking Lieutenant Beckwith's Estimates from Council Bluffs to Lassen's Meadows, and thence via this route to Sacramento.

	Miles.	Cost per Mile.	Total.
Council Bluffs to Black Hills	520	\$35,000	\$18,200,000
Black Hills to South Pass	291	75,000	21,825,000
South Pass to Fort Bridger	131	50,000	6,550,000
Fort Bridger to Salt Lake	173	60,000	10,380,000
Timpanogos Cañon	10	150,000	1,500,000
Salt Lake to Lassen's Meadows	451	45,000	20,295,000
Lassen's to Big Bend, Truckee	104	60,000	6,240,000
Big Bend to California State line	38	66,000	2,500,000
State line to Sacramento	140	88,428	12,380,000

Total length, 1,858 miles; total cost, \$99,870,000.

It will be seen from this estimate, that the whole Continental road, nearly two thousand miles in length, was to cost less than one hundred million dollars, or an average cost of \$53,751 per mile. Mr. Towne's statement of the cost of the Central Pacific, much less than half the whole distance, makes the actual cost of that road alone the enormous sum of \$138,553,459, more than three times the cost estimated by Mr. Judah. There are many ways of accounting for this great difference between *estimated* and *actual* cost, which will readily suggest themselves to the inquiring mind. As I have endeavored to show, the actual cash cost of the roads to the railroad companies is one important element to be considered in fixing rates. Thus far it has been impossible to ascertain this cost. The Act of Congress granting them aid provides that when their net earnings exceed ten per cent of their actual cost, then Congress may reduce the rates of charge to be allowed them. The net earnings of their roads now, and for a long time heretofore, have largely exceeded this ten per cent, but the books of these corporations are so kept, and the amounts earned so frittered away by excessive operating expenses, and in other ways, that the precise figures cannot be obtained. Therefore the reductions proposed by myself were not based upon any actual figures, because they could not be obtained, but they were based upon authentic estimates, and the reductions are not greater than ought to be made.

The companies having been organized, the probable cost of the roads reliably ascertained, and the means having been provided by the Government for prosecuting the work successfully, it was commenced at both ends of the line, and carried on by the Union and

Central Pacific Companies with unexampled skill and rapidity. But my purpose now and hereafter is to deal only with the California corporation.

WORK COMMENCED ON THE CENTRAL PACIFIC.

On the sixth day of November, 1862, the City of Sacramento granted to the Central Pacific Railroad Company and its assigns the right of way through the city, together with "all the right, title, interest, and estate which the City of Sacramento, or the City and County of Sacramento" had to a tract of land known as "Sutter Lake," or "the Slough." A large portion of this slough has since been filled in, at great expense, and is now utilized for depots, machine shops, and other purposes.

Ground was broken at the City of Sacramento on the eighth day of January, 1863, and the occasion was made one of public importance and general rejoicing. Contracts for constructing it were at first let in subdivisions, but this had been found by the managers not to their satisfaction, and the Central Pacific Railroad Company, by appropriate resolution, let the contracts to C. Crocker & Co. Such was Mr. Crocker's testimony before the Board. Mr. Judah's report concerning the letting of these contracts to Mr. Crocker, states that the first eighteen miles from Sacramento, eastward, were thus let for the sum of \$400,000. In the year 1883, on July first, Mr. Judah, as Chief Engineer, submitted an estimate to the Directors as to the probable cost of the road. It will be observed that this was during the war, and the contracts had been entered into for completing the first eighteen mile section, including the American River Bridge. Mr. Judah's estimate, with contracts already let before him, is found on page eighteen of his report referred to, and is as follows:

Approximate Estimate of the Total Cost of First Division of Fifty Miles of Central Pacific Railroad of California.

Total cost of grading, masonry, bridging, ties, and track-laying of Sections 1 to 18, inclusive, as per existing contracts.....	\$400,000
Total cost of grading, masonry, bridging, ties, and track-laying of Sections 19 to 50, inclusive, as per proposals received from contractors.....	1,835,896
Total cost of iron rails, locomotives, engines, passenger, freight, and baggage cars, turn-tables, switches, and frogs, and machinery for machine shop.....	721,000
Total cost of buildings, machinery, right of way, and engineering.....	175,000
Contingencies.....	89,600
Total cost of First Division of fifty miles.....	\$3,221,496

For detailed estimates of the above, as also the actual cost of grading, masonry, etc., already performed, you are respectfully referred to accompanying schedules, marked D, E, and F.

On the twelfth day of last April, Mr. Charles Crocker was before the Board of Railroad Commissioners for examination. With the above estimate before me, which was also shown to Mr. Crocker, I questioned him at some length, in the vain endeavor to find out what was the actual cost of the road. His testimony upon that occasion was substantially as follows:

The witness testified that he had taken the contract to build the road through to the State line. At first the contracts had been let in subdivisions, but it had been found, after trial, that the road could not be built in that way. Some of the subdivisions would be finished and others not. The Central Pacific Railroad Company had therefore passed a resolution letting the contract to him. He had performed the work. After the examination had proceeded some time Mr. Crocker objected to giving further evidence upon the subject. He thought the testimony

was irrelevant. He was willing to swear to all the report of Huntington taken from the books, but he refused to swear to any estimates of Chief Engineer Judah. The actual cost could be ascertained from the company's books. He demanded a ruling upon the relevancy of the testimony.

MR. FOOTE said he was conducting the examination to ascertain the cost of the road. Judah said C. Crocker & Co. had taken the contract to build the first eighteen miles of the road from Sacramento for \$400,000. He wanted to know from the witness whether these things were correct.

PRESIDENT CARPENTER said he would not like to rule out any testimony likely to show remotely the cost of the road, the point the Commission was trying to ascertain.

MR. FOOTE: It appears here that the cost of locomotives was to be \$10,000 apiece?

MR. CROCKER: Yes, that shows the ridiculousness of Judah's estimate. We were obliged to pay \$37,000 for a locomotive. The estimate was made before the war. The war came on and we were bound to get our machines as best we could.

MR. CARPENTER: Now, if we should rule out this testimony we would never have ascertained this fact.

MR. CROCKER: Well, if the Commission insists I am willing to go on. Mr. Judah's report was all guess-work. As I say, *his estimates were made before the war*. The war came on, and we built locomotives only to have the Government take them. Then we were obliged to build more at such prices as we were obliged to pay.

The foregoing extract is a report of Mr. Crocker's testimony taken from the San Francisco Bulletin. Mr. Judah's estimates were not made before the war, but during that time, in the year 1863. They may have been "*all guess-work*," but it is a little singular that the road should have been built upon his estimates and plans, as it undoubtedly was. From the same source and in the same connection I make the following extract from Mr. Crocker's testimony:

MR. CROCKER: Well, as to the cost of the road, I can only say that one mile might cost a million of dollars and another mile ten thousand dollars. The estimates or actual cost are averaged. If I testify here contrary to what our books show, of course I am wrong and will have to take it back. You can't expect a man to remember these things for twenty years.

MR. FOOTE: Mr. Judah's report is familiar to you?

MR. CROCKER: It was at the time. I used to pore over it night and day.

MR. FOOTE: The figures of the report were what induced you to go into the enterprise?

MR. CROCKER: Yes; that had its influence. We found, however, that Mr. Judah's estimate was wrong. That is, we found we could not build the road for what he estimated. Before the war we could buy iron for fifty-five dollars a ton; afterwards we paid ninety dollars for it. *I could build the road now for what he estimates.*

I recommend the italicized portion of the last answer to the careful consideration of my associates, who have all along acted upon the principle that *present value*, not *actual cost*, is the correct theory upon which regulation should be made and profits allowed.

Mr. Towne, in a written reply to certain questions, prepared by myself, and sent to him to be answered under oath, sent a communication to the Board, not verified, which gives the cost of the Central Pacific Railroad from Sacramento to Ogden, not including the leased lines. This is the first question and answer thereto:

First—What has been the total cost of your road and equipments to date?

Answer—The cost of the Central Pacific Railroad, including right of way, depots, buildings, wharves, docks, etc., to December 31, 1882, is \$138,553,459 29. The cost of equipment, including shops, machinery, real estate, river steamers, material, fuel, etc., is \$16,665,205 89. Of this amount there is over \$4,000,000 of material and fuel on hand, which is necessary on account of being so far removed from the base of supplies.

This answer furnishes the first positive statement of the actual cost of this road to the company. Even *one hundred and thirty-eight millions of dollars* is more than *three times* the amount estimated to be necessary by Mr. Judah, and I shall conclusively show, further along in this communication, that more than *one third* of this amount went into the pockets of individuals who contracted with themselves for the work, through the convenient device of the Contract and Finance Company.

ANOTHER ESTIMATE OF THE COST.

Mr. C. P. Huntington, one of the original incorporators of the Central Pacific Railroad Company, for a long time a well known resident of California, but recently a denizen of New York, manager of the company's affairs in the East and at Washington, and whose recently published correspondence throws some light upon the methods adopted to secure favorable legislation upon railroad matters, at one time gave an account of the financial status of the company and the funds it had obtained from various donations and grants. On the twelfth of May, 1874, Mr. C. P. Huntington addressed a communication to the Hon. Philetus Sawyer, the "Chairman of the House Committee on Pacific Railroads," which is now before me. The occasion for this address was a resolution of inquiry into the affairs of the Central Pacific Railroad, introduced by Hon. J. K. Luttrell, who was then a member of Congress from California, on the twelfth day of January, 1874. Mr. Luttrell's resolution had been referred to the committee of which Mr. Sawyer was Chairman. Mr. Huntington was desirous of repelling what he considered unjust imputations against the corporation which he represented, and, for this purpose, he wrote the pamphlet alluded to, which is bristling with facts and figures. That portion of Mr. Huntington's statement referring to the cost of the road, together with his remarks thereon, I give entire, for the purpose of comment and explanation:

VI. I commenced with the intention of showing the *facts* in regard to the items given in a summary on the first page of the resolution, as being the aid furnished to the company. This I believe I have done, and will not trouble you with further details, except to give a list of the bonds issued by and to the company, and by the Government, for the purpose of obtaining means towards the construction of the road, and I would respectfully ask your committee to compare the list given below with that given in the resolution, and to bear in mind that these bonds, with the stock, were all that the company had from which to raise money to apply to the construction and equipment of the road. They were used, as it was intended they should be used, to raise money with which to build the road, and they have been honestly and economically used.

Summary of the above items.

		Reduced to Gold.	Reduced to Gold.
Central Pacific Railroad Company of California, first mortgage	\$25,885,000 00	-----	\$18,625,499 75
U. S. Government Bonds to Central Pacific	25,885,120 00	-----	19,119,552 95
Central Pacific 7 per cent Bonds of 1883	1,483,000 00	-----	830,025 35
Central Pacific 7 per cent Bonds of '84, State aid	1,500,000 00	-----	978,584 68
Western Pacific Railroad Co., first mortgage	2,735,000 00	-----	1,975,814 39
U. S. Government Bonds to Western Pacific	1,970,560 00	-----	1,616,053 50
Central Pacific Railroad Co., Land Bonds (\$10,-000,000)	9,153,000 00	-----	7,894,345 00
Net proceeds of land sales to January 1, 1874, in gold	613,675 69	-----	613,675 69
County Bonds, San Francisco, to Central Pacific	400,000 00	\$300,638 80	
County Bonds, Sacramento Co., to Central Pacific	300,000 00	192,129 55	
County Bonds, Placer Co., to Central Pacific	250,000 00	160,772 89	
			653,541 24
County Bonds, San Francisco, to Western Pacific	250,000 00	175,000 00	
County Bonds, San Joaquin, to Western Pacific	250,000 00	125,000 00	
County Bonds, Santa Clara, to Western Pacific	150,000 00	101,650 00	
			401,650 00
California and Oregon Bonds	6,000,000 00	-----	4,589,648 16
Central Pacific on California and Oregon Branch (\$7,200,000 authorized), sold	1,066,000 00	-----	802,457 20
Central Pacific on San Joaquin Branch	6,080,000 00	-----	4,686,590 83
San Francisco, Oakland, and Alameda	500,000 00	-----	425,000 00
	\$84,471,355 69		\$63,212,438 74

While the above gross sum of \$84,471,355 69, with the stock and certain earnings of the company, which went into construction account, constituted the actual cost of the road, it will be seen by the above summary of items that the company was subjected to heavy discounts in realizing its securities and converting them into gold during the war and soon after the war, when gold was high; and in addition, the company was subjected to heavy expenses for commissions and advertising, in realizing its securities.

Mr. Huntington's estimate of the cost in 1874 was widely different from that made by Mr. Towne to the Commission, and Mr. Crocker acted wisely in declining to swear to its truth, unless it corresponded with the books, the most important of which, relating to this subject, have been lost, or at least cannot be found. What was the amount of the "certain earnings of the company," referred to by Mr. Huntington, he does not explain. "The stock," however, can be traced and accounted for, and this brings me to the reference I desire to make to a corporation well known to the whole country as

THE CONTRACT AND FINANCE COMPANY.

This company was likewise a California corporation, a twin organization with the "Credit Mobilier," which contracted for and constructed the Union Pacific Road. The scandalous *exposé* years ago made concerning the methods pursued by these organizations at Washington, is familiar to almost every one, and need not be repeated here. In the same communication of Mr. Huntington, heretofore quoted from, he gives the following account of the Contract and Finance Company:

The work to the easterly line of the State was let to the firm of C. Crocker & Co. This plan worked much better, and the work progressed much more rapidly; but gold was at a high premium, and it became necessary to employ more capital in the work. The bonds and stock of the company, and the securities which it had at its disposal, could not be sold as fast as money was required for the prosecution of the work. Accordingly a contract was made with the Contract and Finance Company, a corporation organized under the laws of California, to complete the work. This contract, as well as that with C. Crocker & Co., was made at prices which were fair and reasonable for the railroad company, payable partly in gold coin and partly in stock. This company was able to obtain money on credit more advantageously than the railroad company, or the former contractors, could do. It imported a large number of laborers from China—some eight or ten thousand—and prosecuted the work much more rapidly and successfully than before, and more rapidly than it could have been prosecuted if the work had been let to small contractors. No sub-contracts were allowed or made.

Mr. Crocker's testimony, before this Board, was taken down in full by our Stenographer, and the notes were written up, and are now on file in the office. The books of C. Crocker & Co., which firm constructed the line from Sacramento to the State line, have, likewise, been lost. Upon that question Mr. Crocker testifies as follows:

Question—Do you know what the Central Pacific line cost per mile from Sacramento—I mean the average per mile from Sacramento to the State line, while under your supervision? Answer—I could not tell you now, sir; I don't remember. It cost a very large amount though.

Q. Have you any figures by which you could give us that information—any books? A. No, sir; I have not.

Q. Were there not books kept? A. Well, yes; I kept books—my accounts.

Q. Any of them in existence? A. I do not believe there are. I have not seen them for ten years.

Q. Do you know what has become of them? A. No, sir.

Q. And you cannot give us any information as to what became of them? A. I closed them up and I think they were put in boxes at Sacramento, and where they are now I could not tell you.

Q. Do you know if they are in—

Witness (interrupting)—They are closed up. I owed nobody and nobody owed me, and I did not consider them of any value.

Q. Well, then, is there any way, in your judgment, by which the original cost to you of the Central Pacific Railroad from Sacramento and within this State could be ascertained? A. I cannot, only to ascertain it in a general way.

Q. But there are no books in existence to your knowledge, now, by which these figures could be given, are there? A. No; none.

Q. And you have no knowledge of what has become of the books? A. No.

Q. They were rather voluminous, were they not—a good many books? A. Well, no; not very. I kept them in a very simple manner. I kept an account of what coin I received and what I paid out; that is about all. And about all I had left when I got through was the stock. The money was all spent that I received on the contract.

When the Contract and Finance Company was organized, Mr. Charles Crocker was and continued to the end to be its President. He was not at that time one of the Directors of the Central Pacific Company; he had been before, and subsequently became one. Neither Governor Stanford, Mr. Huntington, or Mr. Hopkins were nominally connected with the Contract and Finance Company, but they really controlled it, and had representatives in the Board.

The amount of Central Pacific Railroad stock paid to the Contract and Finance Company, for work done by that corporation, as stated in the evidence of Mr. Crocker, was \$58,000,000, in par value.

There was also paid in money by the Central Pacific Railroad Company to its corporation tender, the Contract and Finance Company, a large sum in cash, amounting in the aggregate to \$43,000 per mile of road constructed. Mr. Crocker in his evidence says that the stock payments were worthless at the time they were made, but by good management they have become valuable since that time. Purchases and sales have been made since at a sum per share greater than its par value, and at the time Mr. Crocker was giving his evidence, he stated it to be worth \$80 per share in the New York stock market. Mr. Crocker was doubtful as to what became of the Central Pacific stock paid to the Contract and Finance Company, for in answer to my question, he says:

Answer—I have no desire to conceal anything about it. The railroad company paid the Contract and Finance Company so much a mile for building the road, and the Contract and Finance Company spent all the money it got from the Central Pacific Railroad Company in building the road. They never derived a cent, a dollar of cash profits.

Question—Did the Contract and Finance Company receive other consideration from the Central Pacific Railroad Company, except the money they used, in the way of stock or bonds?

A. They received stock.

Q. Now, to whom was the stock given?

A. It was given to the Contract and Finance Company.

Q. Did any of it get into the hands of Governor Stanford, Mr. Huntington, or Mr. Hopkins?

A. I think so; yes, sir.

Mr. Crocker certainly knew at this time that he, as President of the Contract and Finance Company, had received his proportion of the stock earned, and he ought to have known that the representatives of his associates received and turned over to them their due proportion. Fortunately, however, the examination of other witnesses before the Board supplied the information.

Mr. Brown, the former Secretary of the Contract and Finance Company, Mr. Hopkins, the present Treasurer of the Central Pacific Railroad Company, and Mr. Douty, were all examined upon this subject. From their evidence it appears that certain dummy Directors of the Contract and Finance Company received the stock of the Central Pacific Railroad Company, and they immediately turned it over to Messrs. Stanford, Hopkins, and Huntington, who were its real owners. Mr. Crocker being a member, and President, of the Board,

received his own share. Thus, it appears that the money paid to the Contract and Finance Company, was all expended in payments made for the work, but that stock to the amount of \$58,000,000 was turned over to the Directors of the very corporation from which it had been received. This same stock is put in as a part of the cost of the road, and is the same stock upon which dividends have been declared and paid. It was never a legitimate item of the cost, in my judgment. The whole of this stock was earned for constructing some five hundred and fifty and two tenths miles from the State line to Promontory. How much of this stock C. Crocker & Co. received for work done in California, and whether they retained it all or divided with the other Directors of the Central Pacific, is not known. Mr. Crocker's books are lost, and he does not remember the cost. The Contract and Finance Company's books are likewise lost. Under these circumstances it is impossible to determine from documentary evidence what the actual cost of the Central Pacific Railroad was to the Contract and Finance Company. It is equally impossible to ascertain the fact from living witnesses, as they do not remember. By actual cost, I do not mean the money nominally expended upon it by the Central Pacific Railroad Company, for Mr. Towne gives us the figures to a cent, \$138,553,459 29.

What I do mean is what it really cost the Contract and Finance Company, for that was its true cost to the railroad company. During the whole of my examination of Mr. Crocker, answers to questions upon this subject (actual cost) were constantly evaded, and finally objections to them were sustained. My associates contend that actual cost to the company cuts no figure in the inquiry, if I understand their position.

This Board has no means of determining its present value—the criterion of the majority for purposes of regulation—except by its earning capacity. The effort to ascertain this fact from the railroad authorities has proven abortive. In order to get at this fact from the only available source at the command of the Board, I propounded certain inquiries to the General Manager at our first session. The fifth and sixth questions, as answered by Mr. Towne, are as follows :

Fifth—What is the total value of all your property in this State at this time?

Answer—*I am unable to give you the desired information.*

Sixth—What was the total amount of taxes assessed against the road in this State during the past fiscal year? Please state assessed valuation in each county of this State, and also whether the taxes assessed have been paid.

NOTE.—For answer please refer to annexed schedule, the aggregate of which is as follows :

Value of railroad.....	\$23,485,629 00
Value of other property.....	5,431,665 00
Total value.....	28,916,694 00
Taxes charged.....	475,653 41
Taxes paid.....	236,337 57

These figures are the aggregate of certain tables furnished by Mr. Towne, showing the assessed valuation and the amount of taxes assessed against and paid by the Central Pacific and "leased lines" in every county in California, and the tables need not be given here. Mr. Towne is the General Manager of the Central Pacific system of roads, including its leased lines, and the total length in California of these roads is two thousand and nineteen miles, nearly three times the mileage of the Central Pacific Railroad proper, the cost of which up to 1882, including equipment, according to Mr. Towne,

was more than \$154,000,000. Mr. Towne fails to give us the value of these two thousand and nineteen miles of road, but if his estimates concerning the Central Pacific are correct, it would be largely in excess of \$300,000,000. By reference to Mr. Towne's figures the assessed valuation of all the roads managed by him in this State, including railroad and other property, is only \$28,916,694, a sum ridiculously low, if the estimate of costs given be correct. It therefore becomes a pertinent inquiry, whether the cost has been purposely raised, or whether the value since completion has decreased, so that the property is now only worth *one tenth* of what it really cost.

I have always contended, and believe now, that the stock paid to the Contract and Finance Company and immediately returned to the pockets of the Directors of the Central Pacific, if even that formality was gone through with, was no part of the cost of the road, and that the patrons of it should not be taxed to pay dividends upon a fictitious valuation. *A trustee, using trust funds for his private gain and profiting thereby, is compelled by all rules of law and equity, when the fact is discovered, to account to his principal for the profits so made; to retain them being deemed fraudulent in law.* Individuals contracting with themselves, concerning a great public work, which the Government has fostered, protected, and furnished the money to build, are, or ought to be, upon the same footing. If regulation of these roads is legal and possible; if a fair profit on the investment is the criterion, on or one of the elements of regulation, why is it unjust for a Railroad Commission, charged with these duties, to refuse to allow profits upon stock which represents a double valuation, purposely made so as to increase the profits of those who control the roads, and who really issued it to themselves, in fraud of the rights of the people and the Government which created the corporation and endowed it with all its rights? Some of the stock has been legitimately disposed of and it is not now known how much still remains in the hands of those to whom it was originally paid. Some has been placed "where it would do the most good," but enough remains in the hands of the present Directors to enable them to keep the control of the companies. Most of these facts have been public property for years; none of them were known during the period when the railroad was in course of construction.

But to return to that time. Work upon the Central Pacific was vigorously pushed from the time of its commencement. Engineering difficulties of great magnitude were frequently encountered and overcome, and no one pretends to deny that those who conducted the enterprise are entitled to great credit for the energy and skill displayed in finishing the entire work several years before the time required by the Act of Congress.

The bonds were issued to the company in sums of from \$16,000 to \$48,000 per mile, as the work progressed. Eight miles eastwardly from Sacramento was established as the distance for which \$16,000 per mile was received; from that point to the State line, one hundred and fifty miles, the company received \$48,000 per mile, and from the State line to Promontory Point, in Utah, five hundred and fifty and two tenths miles, bonds to the amount of \$32,000 per mile were issued by the Government.

The connection with the Union Pacific Railroad was made on the tenth day of May, 1869. By some ingenious contrivance, the blow

from the silver hammer, which drove what was said to be a golden spike in the last rail, was communicated to the electric wires in the immediate neighborhood, and thus was the intelligence of the conclusion of the great work simultaneously flashed to every section of the country. Subsequent to this time the point of junction between the two roads was fixed at Ogden, in Utah, some fifty miles farther east, where it has since remained. It was given in evidence before our Board that the Central Pacific Railroad Company purchased this fifty miles from the Union Pacific Company, but I do not find the fact stated or the price paid in any of the reports.

The effect of the completion of the Pacific roads upon the commercial and business interests of San Francisco and the State of California at large, has been marked. Property is not so high now in San Francisco as it was when the roads were finished, and this may be truthfully said of every other business point then in existence in this State, with, perhaps, the exception of the City of Los Angeles, which has been particularly favored, of late years, by the managers of the Southern Pacific. The reason for this state of affairs is, of course, to be found in the fact that a large amount of the trade of adjacent States and Territories was secured by eastern manufacturers and merchants, who could then successfully compete with San Francisco merchants, by reason of railroad facilities furnished. I do not mean to intimate that railroads are not beneficial, or that I desire to return to the era of ox-team communication. I simply state the facts as they exist. The benefit of increased facilities for transportation no one will deny, and as the facilities increase and the volume of business likewise, "rates" and "rates of charge" should decrease. This is axiomatic, and generally acted upon, but not always. That the aggregation of large wealth, in the hands of the men who control great railroad corporations, is sometimes a detriment to the majority of the people, the recent history of our own State, and certain revelations lately made concerning political methods elsewhere, abundantly proves. But this is a question which I shall allude to again in this communication.

WHAT HAS BEEN DONE BY THE PRESENT BOARD.

I have, at the peril of extreme prolixity, dealt only with the affairs of the Central Pacific Railroad Company and its leased lines, because thus far, the Board has made no order and adopted no schedule applying to the lines of any other road in this State, and I shall now review that portion of the majority report which undertakes to deal with the actions of the Board, with reference to the various propositions regarding "fares and freights" which have either been voted down or adopted.

The constitutional provision under which this Board came into existence, is sufficiently broad for all purposes; the Act passed in 1880, in aid of the powers and duties with which it has been invested, can be amended with advantage in some particulars, but is comprehensive enough now to accomplish many practical actual results, in the matter of reductions of freight, and fares, which have thus far been defeated.

That this Board has some judicial powers I do not pretend to deny, but that it is purely a judicial tribunal, bound by the narrow and technical rules of construction usually applied in Courts of justice, I

do not think is susceptible of demonstration. It can investigate, it is true, but it can and should act, sometimes upon important matters even, in cases when all of the facts to make a complete case are not before it; as for instance, when a corporation either conceals or declines to furnish the information necessary upon which to base a perfect judgment.

In other words, even with every element necessary to be considered before it, the work of a Commission in fixing fares and freights in the first instance must necessarily be in a degree experimental, and the result will be less certain in the proportion that the facts are not known.

For this reason it is necessary to proceed somewhat cautiously at first. *I have never made a proposal for reductions upon the lines of the Central Pacific or its leased lines that I did not conscientiously believe, from the facts known to me, to be less than really ought to be made.*

AN ATTEMPT TO FIX FARES.

The first proposition to reduce fares was made in the present Board of Railroad Commissioners on the ninth day of January, 1883, by the introduction by myself, of the following resolution :

Resolved, That the Board of Railroad Commissioners of the State of California do hereby establish and adopt the following schedule of rates of charges for the transportation of passengers on the lines of railroad in this State owned, leased, controlled, or operated by the Central Pacific Railroad Company, or the Southern Pacific Railroad Company :

First—The rates for the transportation of passengers over the age of twelve years are hereby fixed and established at the sum of three cents a mile.

Second—The rates for the transportation of passengers over the age of five years and under twelve years are hereby fixed and established at the sum of one and one half cents a mile; *provided*, that when any of said railroad companies have, heretofore, by reason of competition, or for any other reason, reduced or fixed their rates for the transportation of passengers and their baggage, or for passengers only, at a sum equal to or less than the rates hereinbefore named, then in said cases said rates shall not be raised or increased.

This resolution was officially designated upon our minutes as Resolution No. 1. At the same time that it was introduced, I also offered the following questions to be answered, under oath, by the railroad authorities, and moved their adoption by the Board. These questions are officially known upon the minutes of our Board as Resolution No. 2, and are as follows :

First—What has been the total cost of your road and equipment to date? If any company owns, operates, or controls more than one line of road, please state the cost of each separate line?

Second—What were your gross earnings for the year 1882?

Third—What were your operating expenses for the year 1882?

Fourth—State the per cent of operating expenses as compared to gross earnings for each year since the road has been in operation?

Fifth—What is the total value of all your property in this State at this time?

Sixth—What was the total amount of taxes assessed against the road, in this State, during the past fiscal year? Please state assessed valuation in each county of this State, and, also, whether the taxes assessed have been paid?

Seventh—Please furnish a schedule of the rates of fare and freight charged by you in this State?

Eighth—How much of your gross earnings came from local passengers? How much from local freights?

Ninth—What were your total expenses for salaries to employes for the year 1882? Please state the names, official designations, and salaries of every person in your employment, in any capacity whatever, who receives as much or more than \$5,000 per annum.

Tenth—What amount of money do you pay as rent for each of your leased lines? Please state the rent per mile as well as the gross sum for each line.

The above resolution (Resolution No. 1) relating to the reduction of fares and establishing the *maximum* at *three* cents per mile, seems (from a reading of the majority report, but I did not observe it at the time) to have excited the ire of Commissioner Carpenter to an unusual degree. He attacks it with a vigor of language and display of rhetoric calculated to cloud the subject to which it relates in an impenetrable myth of technicalities. Mr. Carpenter speaks for himself only, I presume, when he says it was "introduced in advance of research;" he certainly does not speak for me, or correctly represent my views upon the subject. I distinctly stated, in open meeting of the Board, at the time this resolution was introduced, that I was *prepared to act then upon the subject to which the resolutions related from investigations already made*, but in deference to the apparent wishes of my associates, I consented to the postponement of a vote upon the resolutions until the other members could examine them and make up their minds what was the correct thing to do.

Mr. Carpenter said nothing about the legality of the resolutions at the time when they were introduced, for I had consented to their postponement, but in his majority report, referring to the one relating to a reduction of fares, he says it "has no reference whatever to the law, or the facts tested by the law, which prescribes *orders, decisions, and schedules*." A year's consideration of the subject has enabled Mr. Carpenter to pick flaws in a resolution which he was not at first prepared to combat. Further commenting upon this resolution, Mr. Carpenter, in his report, has this to say:

It is neither in form nor in substance what it purports to be, and is a mere nullity. Considered as a recommendation of arbitrary and uniform rates, not based upon any relation or proportion of the operating expenses and profits in passenger and freight departments of any road, nor upon the cost of any service in either of them, it was as easily postulated before as after the investigation.

This language seems to have been based upon the idea that the individual members of the Commission had made no investigation of the subject before taking the offices to which they had been elected.

So far as I am concerned, this was not true, and I had always supposed until now, that the other members of the Board had been equally diligent in ascertaining their duties. The platform upon which they, in common with myself, had been nominated and subsequently elected; upon which the contest had been conducted, and which each and every one of us had categorically indorsed, contains this language:

Resolved, That railroad fares and freights should be materially reduced; discriminations in favor of localities or persons should be prohibited, and we condemn the majority of the Railroad Commissioners of this State for their faithlessness in the discharge of their official duties. The nominees of the Democratic party will, if elected, carry out, in letter and spirit, the declarations of this resolution, and relieve the people to the extent of their jurisdiction from the exactions and injustice now practiced with impunity by the railroad company.

The gentlemen opposing the members of the present Board for the offices which the present Commissioners now hold, were nominated upon and pledged to support the principles of a platform, which, with reference to railroad affairs, reads as follows:

Seventh—While we recognize the fact, that the building of railroads has proved one of the most potent agencies in the development and progress of the country, we at the same time remember that the great power which authorized such roads to be built, including the sovereign right of eminent domain, was granted to the railroad companies by the people, for the people,

and on the sole ground that the construction and working of railroads constitute a public use and such roads public highways. We declare that railroad companies, the same as individuals, should be dealt with in fairness and without injustice; but, by reason of their relation to the people, they must be kept subordinate to the interests of the people and within governmental control. The people should be protected by law from any abuse or unjust exactions. Unjust discriminations against individuals or localities should be prohibited. Equal service upon equal terms to all persons should be enforced. Charges for transporting persons and property should be limited to pay the legitimate expenses of operating such railroads, their maintenance in good repair, and a fair interest on their *actual value*. Such value shall bear the same relation to its assessed value, that the value of other property does to its assessed value. Charges in excess of this are in violation of the fundamental law of public use, which allows railroads to be built; and we hereby pledge our nominees for Railroad Commissioners to the enforcement of these principles by such a material and substantial reduction of the rates of fares and freights as will secure that result—the basis being cost of service, with reasonable allowance for interest and repairs as above indicated, instead of mercenary exaction of “*all the traffic will bear.*”

It will be seen from an examination of these two resolutions that the people of California, *irrespective of party*, had settled upon a policy regarding the regulation of railroad matters which was too plain to be mistaken. The party which was successful, and whose candidates were elected, had made a *plain specific demand for a material reduction*, and every candidate accepted the nomination with the distinct understanding that he would carry out the pledges so made. Mr. Carpenter, at least, knew what the obligations of the platform implied, for he had been a candidate for the same office before. I understood the obligations I assumed in accepting the nomination upon the platform, and if previous investigation had not fully satisfied me that I could carry out conscientiously the pledges it implied, I should not have been a candidate.

What is a *material reduction* is a matter upon which there may be an honest difference of opinion. I shall demonstrate before concluding that the reductions made by the schedules of the present Board, either in fares or freights, are in no fair sense “*material.*” The adjective “*material,*” as used in the sense of a “*material reduction,*” is thus defined in Webster’s Unabridged Dictionary:

MATERIAL. *a.* * * * 3. Of solid or weighty character; not insubstantial; of consequence, not to be dispensed with; *important*; momentous. “The *discourse*, which was always *material*, never trifling.”

And whilst I am upon this subject, I may as well say that my opinion now is, as it has always been, that the preparation of a “*schedule*” by the Board of Railroad Commissioners is not at all necessary to carry into effect any reduction that the Board should feel called upon to make. I cannot believe that the Legislature intended to cast upon this Board a duty which, if faithfully performed, would necessitate an amount of work which the effective force of this office would never be able to accomplish. I believe that a resolution fixing a maximum of rates of fares or freights, served upon the proper officers of the railroad companies, would be binding upon them, and that a failure to comply with it could be enforced through the “*medium of the Courts,*” as provided in the Constitution and laws of this State. It is useless, however, to split hairs or waste time in a discussion of this character, for it was avowed by myself, when this resolution was introduced, that if there was any question as to its legality I would prepare a schedule in conformity with it, within a week after its passage. Referring to the last question in the foregoing series (No. 9), its object was perfectly apparent, and I frankly stated it to be my intention to ascertain, if possible, whether this corpora-

tion had then, or if it ever had, political agents in this State, who were drawing salaries for services performed. The question was never answered satisfactorily, and before any answer was returned, the following protest was read to the Board by Colonel Creed Haymond, one of the attorneys for the Central Pacific Railroad Company:

SECRET SERVICE.

Passing from this section, and referring a moment to the second resolution to which your honorable Board has called the attention of the company, we have a single suggestion in relation to the ninth question of that resolution. Part of it calls for a statement of the names, official designation, and salaries of every person in the employment of the company who receives as much as or more than \$5,000 per annum. The suggestion which we desire to make in this connection is, that while it may be entirely proper for your Board to know the amount of salaries paid to every class of employes, from the President down, yet it may be an invasion of a private right to ask the name of any employe not directly connected with the executive department of the company; that, as between the company and such persons the question of salaries is a private one. This is the only objection we would urge against the second resolution, for when the salaries paid to each class of employes are laid before your honorable Board you will find that to the President and Directors of the various companies belonging to the Central Pacific Railroad system are paid the lowest salaries known to railroad service, while to subordinate and skilled mechanics, and down to the humblest laborer, there is given the largest compensation known to such service.

I beg leave to differ with Colonel Haymond as to that portion of his protest which says that the highest salaries known to the service are paid to "skilled laborers and subordinates." It is undoubtedly true that skilled and ordinary labor commands as high prices in California as it does in any other settled community in the United States. But this is not due to the advent of the railroad company. I am informed by employes of the road that the wages of many of the employes have recently been reduced, and "station agents" at some of the important stations on the line of the Southern Pacific Road are only paid \$65 per month, and are expected to do the commercial telegraph business without extra compensation.

The resolution reducing fares was not pushed to a vote at the first meeting of the Board, but the questions were sent to the railroad authorities. On the fifth day of February, 1883, at a meeting of the Board, Commissioner Carpenter drew from his pocket and introduced for adoption by the Board, a so called Substitute for my three-cent resolution and questions. I had never seen or heard of it before it was presented. It was as follows:

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA.

In the matter of Resolutions Nos. 2 and 3, introduced by W. W. Foote, and now pending before said Commissioners: The investigations commenced by said resolutions, and now on this day resumed by said Commissioners upon their own motion, without petition, complaint, or any evidence of record herein, and it appearing that said Resolution No. 2 is by its terms confined to rates of charges for the transportation of passengers on the lines of railroad in this State owned, leased, controlled, or operated by the Central Pacific Railroad Company, or the Southern Pacific Railroad Company; and it appearing to said Commissioners that this investigation, and the evidence taken therein, should relate to the general subject of fares and freights, and furnish a basis and a reason for the revision and reduction of both, upon any or all the railroads or transportation companies in this State; and it appearing that for such purpose the scope and requirement of said Resolution No. 3 should be so enlarged and outlined that the power conferred by the Constitution and laws shall be duly and regularly exercised as therein prescribed. Now, therefore, as a substitute for said resolutions, it is ordered by said Board of Commissioners:

First—That they will proceed in accordance with the following provision of the Constitution: To establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose to issue subpoenas and all other necessary process.

Second—Having taken, examined, and considered the documentary and other evidence necessary to an intelligent and equitable revision and reduction of charges for fares and freights

by railroads or other transportation companies of this State, they will prepare, and as required by the Statutes of 1880, Chapter LIX, Section 11, serve a printed schedule of such rates and of any changes which may be made in such rates, upon the person, copartnership, company, or corporation affected thereby.

Third—To accomplish the practical purposes aforesaid with becoming order and dispatch, only such testimony, exhibit, or report shall be deemed relevant or material as tends, subject to the following rules and principles, to show: First, the corporate name and principal place of business of any transportation company mentioned in Section 14, Chapter LIX, Statutes of 1880. Second, the names, places of residence, and compensation of all officers and agents employed by or on behalf of such company in the business of transportation, or in operating any railroad of such company; the length and termini, character and equipments, stations and terminal facilities, capacity for freight and passenger service, rates of charges, through, local, and special; resources and financial condition, and general business of any such railroad, and feeder and branches.

Fourth—The present and prospective value of any such road, feeders, or branch, as a source of income and a means of earning it, to be estimated and determined as if for any other purpose; the cost of construction to be taken and considered as an element, but not as a conclusive criterion of value.

Fifth—What should be deemed a reasonable profit on such value, and what rates of charges for fares and freights on such road, branch, or feeder will pay the company owning and operating the same, cost and risk of service, interest on its bonded and floating debts, the sum of taxes paid, and such reasonable profit as aforesaid.

Sixth—The fair apportionment of such rates as aforesaid, with due regard to the relative cost of service and such regulations as are usual and proper for railroad companies, to the passenger and freight departments respectively.

Seventh—The repairs and renewals, betterments and extensions in the State necessary to the safety, public use, or successful operation of any such road, feeder, or branch, and the nature, extent, probable cost, and subsidiary interest of all concerned therein.

Eighth—The rates of charges for all classes of fares and freights established, exacted, or received by any transportation company in this State under special contracts, private instructions, or published schedules, and the reasons, rules, regulations, and classifications by which they are all severally governed and enforced.

Ninth—It is ordered that an attested copy of the following Circular Letter No. 2, be forwarded by mail to the President, Secretary, or General Superintendent of each railroad company in this State.

This was followed by a number of questions to be propounded to Mr. Towne (including those which I had previously asked), and to which I made no objection.

The substitute proposed an investigation before action, and as was stated by myself in my remarks made in opposing its adoption, it would delay action for months. It was adopted, however, by the votes of Messrs. Humphreys and Carpenter, against my earnest, but ineffectual, protest. Having become an order of the Board it has since been acted upon. All the investigations subsequently made by myself have only confirmed previous impressions as to the necessity for an immediate and substantial reduction, and the delays predicted have occurred. Mr. Carpenter's resolution having passed, and the whole people being clamorous for the reforms which had been promised, and the Board having officially announced, through the adoption of Mr. Carpenter's substitute, that it would not act preceding investigation, I at once proceeded to make whatever investigation was possible, to the end that some needed reductions might be made. To this end quite a number of witnesses were called, for the purpose of finding out the necessary facts. I believe that every witness called, including Mr. Charles Crocker, Mr. Brown, Mr. Douty, and a number of others, were brought before this Board at my individual suggestion. In addition to witnesses orally examined, the Board received from the various heads of the departments of the railroad company, a perfect flood of documents, of various degrees of merit, good, bad, and indifferent. Neither the examination of witnesses, or the attentive perusal of communications, enabled me to form a more definite judgment upon the questions before us, than prior reading and inves-

tigations had created. Many of the facts designed to be elicited had not been furnished, and the principle upon which I thought regulations ought to be based, had been ignored by a majority of the Board. Under these circumstances I proposed to my associates that the Board should take a trip through the country, to ascertain from the producing classes what were the special grievances of which they complained. It was our *first* trip, and thus far, has been our *last*.

The investigation was commenced at Colton, and continued at several important points on the line of the Southern Pacific Road, from that point northward to the City of Stockton. More than a hundred people came before the Board at the various meetings held, and the information elicited was, in many instances, valuable. The majority report deals very lightly with an account of this trip. We were whirled over the country in regal style, and given every opportunity for investigation at every point where meetings had been advertised to be held. At several places no complaints were made. Colton, in the County of San Bernardino, was the first place at which a meeting was held. At this point there were no complaints, but not because there were no causes of grievance. Our predecessors in office had visited this place and received a number of complaints, which were referred to the officers of the railroad company, and never afterwards heard of. As all these meetings were held in counties composing the district which I have the honor to represent upon the present Board, and as I am personally acquainted with most of the people living in the localities visited, it was not, perhaps, strange that I was more freely consulted than were my associates. At Colton, as well as other points on the route, I was frequently told that former complaints had not been rectified, and that no great degree of confidence was felt in the present Board. This was a subject of regret to me, and I honestly labored to dispel the impression, and induce parties having grievances to lay them before the Board. In most cases my efforts in this direction were futile. Our meetings at Visalia, Bakersfield, Hanford, and Modesto, were well attended, and at the two last named places, were particularly lively. At Hanford, our meeting was largely attended, and those coming before us indulged in criticisms of the Board, and its failure to act, which were decidedly to the point. At this point (Hanford, Tulare County), and at Modesto, each one of the Commissioners was called upon for an expression of views, which was given, and the feeling was more friendly after than before these speeches. Hanford is about the only place visited, at which we did not remain over night. At Los Angeles there were no complaints, to be accounted for by the fact that Los Angeles is classed as a "competitive point," and, for a number of years has enjoyed unusual favors at the hands of the railroad company. In another connection I shall have a word to say about "competition," and "competitive points."

At every point we visited, I mingled with and talked freely with the citizens about their grievances, real or supposed, and at all times urged upon them the importance of coming before the Board and making known their complaints. At every place visited there was exhibited the same distrust of the Commission, and apprehension of retaliatory measures upon the part of the railroad company, if complaints should be made. Mr. Gray, the General Freight Agent of the railroad, and his assistant, Mr. Smur, who, upon our invitation accompanied us, and to whose courtesy and kindness I feel myself much indebted, sometimes joined with me in urging parties to appear before us, assuring

them that the fact would not be used against them in any way whatever by the railroad authorities.

Notwithstanding these solicitations, I am sorry to say, the trip was not fraught with the good results I had hoped and expected, and I am satisfied that, for the reasons given, many valuable facts were not given to the Board, which were communicated to me individually. I regret that this should have been so, and sought to have it otherwise, but I am simply stating the facts as they exist. After a pleasant, but rather unprofitable journey, so far as the acquisition of useful knowledge was concerned, the Board returned to San Francisco and resumed its sessions in this city.

Among the first business transacted after our return to San Francisco was the decision of the case of Richards & Harrison against the Central Pacific Railroad Company. This involved the validity of what is known as

THE SPECIAL CONTRACT SYSTEM.

For several years past many of the merchants of San Francisco and other places, classed as "competitive points," have shipped their west-bound freight under what is known as "special contracts." This subject has been, perhaps, as thoroughly discussed through the newspapers as any other matter relating to railroad affairs in California. Mr. John T. Doyle devoted much time and considerable space, to an elucidation of the supposed mysteries of the system, immediately preceding the late election. Each one of the present Commissioners had something to say upon the subject in published communications prior to the election, notwithstanding there was some complaint made about the impropriety of "judicial officers" expressing unasked opinions upon questions which might come before them for official action.

The report of my associates only contains a brief reference to this subject other than the published opinions in the case of Richards & Harrison vs. The Central Pacific Railroad Company.

In order that this whole subject may be thoroughly understood I shall here undertake to supply what I conceive to be the omissions, doubtless unintentional, of the majority report. In a published communication to his constituents, dated the thirty-first day of July, A. D. 1882, Commissioner Humphreys uses this language concerning the special contract system: "I am decidedly in favor of the speedy and total abolishment of every species of discrimination, whether as to persons or places, the discontinuance of the contract system, in its arbitrary application to individuals and sections, and the absolute removal of all those grievances against which the people now complain."

Commissioner Carpenter, in a letter to the Daily Examiner, published on the third day of October, A. D. 1882, and widely circulated as a campaign document, expressed his views upon the same subject as follows: "Third, Compulsory and other private contracts between railroad companies and merchants, or other patrons, in consideration of such advantage to either or both of the parties as works an injury to others, or in restraint of transportation by sea, or of free exchange or sale of commodities among merchants, are clearly repugnant to the law governing the public use of railroads, and should be unconditionally annulled and prohibited."

At a much earlier date, namely, on the seventeenth day of July, A. D. 1882, I gave my own ideas upon this question, through the same medium employed by Mr. Carpenter, as follows: "The contract system enforced upon the merchants of San Francisco, by means of which they are forced to pay double prices unless they ship all their goods by rail, partakes more of the nature of a crime than a mere breach of duty; and I have no doubt will be so declared by the next Legislature."

My opinion, thus expressed, was given after as full an investigation of the question as was possible, as, I presume, likewise, were the opinions of the other Commissioners. My own views, after the trial of the case of Richards & Harrison, were neither altered or modified, but were strengthened, by the testimony offered in that proceeding.

On the sixth day of February, A. D. 1883, Mr. Harrison, of the above named firm, presented a written verified complaint to the Board, alleging, among other things, that his firm had been discriminated against, to its detriment, in the matter of "special contracts." Mr. Harrison appeared in person as the representative of his firm. Summons was issued upon his complaint and duly served upon the Railroad Company's General Manager, and in due time the defendant appeared by its attorney, General Barnes.

General Barnes filed special objections to the complaint, in the nature of a general demurrer, which, for the purposes of the argument afterwards had, admitted the truth of the facts alleged. General Barnes argued his demurrer or motion to dismiss. Mr. Harrison replied, and the matter was submitted to the Board for its decision. I was selected to write the opinion, which I did, and it was concurred in by my associates.

And, inasmuch as it was omitted from the majority report, I insert it here:

BOARD OF RAILROAD COMMISSIONERS OF CALIFORNIA.

Richards & Harrison vs. The Central Pacific Railroad Company.

The question for decision in this case, as it now stands, arises upon the complaint of the plaintiff and certain general and specific objections filed by defendant's attorney in the nature of a special demurrer to the complaint.

The complaint in this case, tested by the liberal rules of pleading prescribed by the Code of Civil Procedure even, is certainly fatally defective. And this statement at once raises the question as to what rules should and ought to govern the Board in matters of this nature.

The Board of Railroad Commissioners, although having certain judicial functions, is not a Court in the sense that proceedings before it are to be governed by the same technical rules which prevail in ordinary Courts of justice, and this was expressly admitted by the attorney for the defendant in his oral argument before the Board.

One of the objects sought to be accomplished by the framers of our present Constitution, and by the people who voted for and adopted that instrument, was to create a tribunal where complaints of this character could be speedily heard and fairly determined, without resort to the artificial modes of drawing pleadings and obtaining evidence which prevailed with reference to such matters prior to the adoption of that instrument.

To require complaints, therefore, before this Board, to be tested by the same rigid standard which obtains in our civil Courts, would be in effect to say that every complainant should be required to employ persons skilled in the law before he could be heard in this Board, which would in practice be to defeat one of the primary objects for which the Board was created.

So far as the complaint undertakes to present the grievances of persons other than the firm of Richards & Harrison, it cannot be considered by the Board, nor can any evidence be received with reference to these grievances in this proceeding. The complaint of Harrison does state, however, that the firm of Richards & Harrison have been compelled to pay higher freight rates than other individuals and firms in the City of San Francisco upon the same classes of goods and for the same distances carried, and the reasons for this alleged discrimination are also given in the complaint. This much can be understood from a fair consideration of that portion of the complaint relating to the discriminations alleged against that firm.

If this be so, there is one good cause of action stated in the complaint, which the defendant should be required to answer.

The only statutory provision upon the subject of pleadings before this Board is to be found in Section 10 of an Act of the Legislature, approved April 15, 1880, and is as follows:

"All complaints before said Board shall be in writing and under oath."

Counsel for defendant, however, strenuously insists that the rules adopted for the government of the former Board control the present one, and that tested by these rules, the complaint is fatally defective.

Without discussing the question fully, it is sufficient to say that the rules can and will be liberally construed in the interests of substantial justice, and without regard to legal technicalities.

Had the framers of the Constitution, or the Legislature which put this Board into operation, have intended to make it purely a judicial tribunal, they would have said so, and they have not, but on the contrary, for any citizen is eligible for this office, whether he be lawyer or layman. The language of this complaint might be strengthened by being moderated.

For the reasons stated, the defendant's objections to plaintiffs' complaint are overruled, and it is required to answer that portion of the complaint relating to alleged discriminations against the firm of Richards & Harrison. The other portions of the complaint can be stricken out, or will be treated as surplusage.

W. W. FOOTE,
Commissioner from Third District.

WM. P. HUMPHREYS,
Commissioner from Second District.

G. J. CARPENTER,
Commissioner from First District.

In accordance with the intimations of this opinion, certain irrelevant sections of the complaint were stricken out, and to the complaint so reconstructed, the railroad company filed a verified answer, and the case was then placed upon our calendar for a trial upon the merits. The trial was had in due time. Mr. Stubbs, General Traffic Manager of the Central Pacific Railroad Company, Mr. Gray, General Freight Agent, and one or two merchants, were called, upon behalf of plaintiffs, and examined. Quite a large number of documents were introduced in evidence, among them one of the blank forms of the special contracts. The evidence is contained in a printed pamphlet of about one hundred pages, and is one of the records of the Board. This case was argued both for the plaintiffs and defendant, and finally submitted. The majority opinion, written by Commissioner Carpenter, and specially concurred in by Commissioner Humphreys, together with the dissenting opinion filed and read at the same time by myself, are printed in the majority report, and it is useless to repeat them here.

A special opinion was filed by Commissioner Humphreys, which does not appear in the majority report.

In order that the whole subject may be understood, that Mr. Humphreys' individual views *then* may be known, and that a valuable document may be preserved in a more enduring form than as a manuscript record in an insignificant pigeon hole, as well as for the reason that I have some comments to make upon this opinion, I insert it here:

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA, }
SAN FRANCISCO, JUNE 6. }

Richards & Harrison, Plaintiffs, vs. The Central Pacific Railroad Company, Defendant.

I find myself in a position of some difficulty in deciding what ought to be done in this case. My associates are both accustomed to the determination of legal questions and the examination of disputed facts. They disagree in this case on both propositions, and it is left to me to follow either. I should agree with my associate, Mr. Foote, if I could, because I have the same feeling in relation to the special contract system that I have always had. I was surprised and disappointed that, notwithstanding the publicity given the proceedings and the liberality of the Commission as regards evidence, we had practically no evidence before us of the operation of the special contract system, except that given by the General Freight Agent of the railroad company, and no merchant or importer testified before us to any fact whatever.

Mr. Harrison, the complainant, was not even a witness in his own behalf, and did not give us the benefit of his knowledge of the matter. It strikes me that there should have been more of an effort made to exhibit the working of this special contract system than complainants have

made. The most I can make from the facts proven, is that there are two sets of rates on bottled beer shipped by Shafe & Co. of Milwaukee—one called the "Open Tariff Rates," and the other "Special Contract Rates," and that the shippers have preferred the "open rates" to the "special contract rates."

The only transaction brought directly to our notice by complainant, was a shipment made at Milwaukee by this firm, under a bill of lading issued in Milwaukee by a railroad with which we can have nothing to do, and where their rate was fixed by that railroad and not by any railroad within our jurisdiction. Letters have been before us written by Richards & Harrison to the Freight Agent of the Central Pacific Railroad Company, complaining of overcharges on various shipments, and Mr. Dempster and Mr. Bach have stated, under oath, that one had no contract because he declined it, and the other had one because he accepted it when offered. If other evidence of what I have always been led to believe was the working of the special contract system exists, it was not produced before us, and I take it that in a case of this nature we are to decide upon the evidence presented, and not according to previous impressions, however correct they may have been, or however much in accord with popular ideas.

I have read the opinions of my associates with all possible attention. It seems to me that a contract made by the merchants of San Francisco, or of the Pacific Coast, with the Union Pacific Railroad Company, and the Iowa lines and great trunk lines between New York and Chicago, with their numerous connections, whatever its terms, must necessarily be beyond the jurisdiction of this Board, and the fact that the Central Pacific Railroad Company receives, out of the prices on through freight by rail, fixed by this contract, larger or smaller proportions of these prices, for the proportion of the carrying done by it, does not make this last company a party to the contract, so as to enable us to deal with the contract as such and declare it to be valid or the reverse. This seems to me to be common sense.

Therefore, I am constrained to say that from the meager evidence brought before us as to the effect of the special contract, the blank form of which has been exhibited to us, and the entire failure of any proof of practical hardship to our merchants as a class, or to the complainants themselves, or of any espionage or interference with the business of the city, and particularly because I cannot see how we can handle or set aside contracts of the nature of the only one exhibited to us in a blank form, or take jurisdiction of them, or prevent them from being made and enforced by the contracting parties, I concur in the conclusions arrived at by Mr. Carpenter, in his opinion, and shall vote for the order which he thinks should be made in the case.

WM. P. HUMPHREYS,
Railroad Commissioner Second District.

This opinion, in my judgment, proceeds upon a mistaken view of the facts indubitably established in the case. It was certainly proved that Richards & Harrison were the consignees of the goods and paid the freight on the same. It was likewise proved and clearly established that this firm were charged fifty dollars per carload more for their goods than other shippers who received their goods under "special contract" rates. Mr. Stubbs and Mr. Gray both so testified, and they likewise admitted, under oath, that the Central Pacific Railroad Company received eighteen dollars of the fifty dollars overcharge, as its proportion of the freight money. It is true that the Central Pacific Railroad Company was not nominally a party to these contracts, but Mr. Stubbs admitted that his company was interested in them to the extent of the freight earnings received under them, and General Barnes fully conceded the facts that the Central Pacific Railroad Company were real parties. On page 36 of his printed brief, on file in this office, he makes the following concession, and every lawyer knows that a fact admitted by counsel supersedes the necessity for proof:

It is in evidence, and admitted for that matter, that the Central Pacific Railroad Company, though not a nominal party to these contracts, has acquiesced in them, approved of them, had a voice in the original determination of the rates, has made suggestions as to their modification, and is interested in the results of the contracts to the extent of its proportion of the moneys agreed to be paid under them.

Upon the same page of his printed brief General Barnes also admits the jurisdiction of the Board in the following terms:

It may well enough be conceded that until the State of Nevada, and the Territory of Utah, shall adopt some law for the control of freights and fares, and for the general regulation upon

this subject of all railroads within their respective borders, the judgment or order of this Board of Railroad Commissioners may control the action of this California corporation in respect to freights and fares, with the details akin thereto, on its line without as well as within this State.

The majority opinion in the Harrison case cites the fact that the mercantile community of San Francisco have made no complaint concerning the operation of the "special contract system." It is true that no other merchants, save Richards & Harrison, have made formal complaints to the Board. Referring to this subject, in the latter part of his report, Mr. Carpenter uses this language :

Since the ninth day of January, A. D. 1883, this Commission has been in session next door to the importing firms of San Francisco, all but one of which has entered into so called "special contracts" with the Union Pacific and other eastern railroads for the transportation of west-bound through freights, all rail, a fact that may account for the apparent satisfaction of the contracting parties with the contracting eastern carriers. The Central Pacific Railroad Company *probrates* on all through traffic. The contracts are executory, and contain a clause in restraint of patronage to ocean carriers on such freight, coupled with penalties for its violation, and some other provisions which might, in a proper case, be held to be void. Every one of them is a contract between citizens of this State and other States, from beginning to end. Judging from the blank form, which is all that has ever been exhibited to the Commissioners, they relate to inter-State commerce. In a suit, therefore, to enforce or rescind one of these contracts, or to annul the clauses referred to, the parties would find themselves in the Federal Courts; but the purpose of this reference is not to indicate a remedy for the alleged wrongs of the contracting firms, all of which are presumed to know their rights, and to have none which they dare not maintain.

The statements made in this extract do not recite the facts concerning special contracts as they were proved in the Richards & Harrison case. They are not, "from beginning to end," as alleged, contracts "between citizens of this State and other States." As heretofore shown by the testimony of railroad employes called and examined by the plaintiffs, as well as by the express admissions of counsel for the companies, these contracts, so far as the freight earned under them by the Central Pacific Railroad Company is concerned, are contracts between citizens of California and a California corporation. In the minority opinion, filed in this case by myself, the following language with reference to these contracts is used, and it correctly states the facts with reference to certain clauses contained in them:

In the first place, a shipper who signs one of these contracts must agree to ship all his freight by rail. A failure to do so forfeits the privileges of the contract and obliges him to pay open tariff rates.

Secondly—No one who has a special contract can buy from or sell to any one who ships in any other way than by rail, under the same penalties.

Thirdly—The railroad company reserves the right to examine the books of shippers in order to determine whether the terms of the contract are being faithfully complied with.

A contract containing such provisions as these, in my judgment, offers a premium for fraud; it gives the dishonest shipper an undue advantage over one who will carry out the terms of the contract; its enforcement is against public policy and in restraint of trade. It establishes a system of espionage over the mercantile community which no common carrier ought to be allowed to exercise under any circumstances.

Entertaining these views, I think a decree should be made declaring that Richards & Harrison are entitled to recover from the Central Pacific Railroad Company all freight moneys which they have paid to the defendant in excess of the "special contract" rates, and that such order or decree could be enforced under Section 22 of Article XII of the Constitution, which gives to the Commissioners power to enforce their decisions and correct abuses through the medium of the Courts. Under the same statutory and constitutional provisions, it seems that we have the power, and it is our duty, to make and serve upon the Central Pacific Railroad Company a general order, requiring that corporation to refrain from entering into further contracts, and to carry for all shippers alike, at the lowest rates which are now charged to the most favored customers. This order could certainly be enforced under that further provision of Section 22, Article XII, of the Constitution, which provides a fine of \$20,000 for failure to conform to such rates as may be established by this Commission.

For the reasons herein stated, I dissent from the views expressed by my associates.

W. W. FOOTE,
Commissioner Third District.

I do not pretend to know what may have been the experience of the other Commissioners, but I can state what has been my own. I have conversed freely with many of the leading merchants of San Francisco, some of whom have signed "special contracts," and others who were conducting business under "open tariff" rates. The universal opinion expressed, was that they were unjust, and a serious detriment to the commercial prosperity of San Francisco. Those who have signed these contracts did so as a measure of self-protection, as they could not otherwise compete successfully with dealers in the same line without them. Those who have not signed them were compelled to make some of their shipments by the Isthmus route, or around Cape Horn, and such traffic is specially interdicted by the terms of the contract itself.

It may seem strange that complaints have not been made, for I have frequently importuned merchants to come forward, or at least allow me to use their names, but have uniformly met with a refusal. The reasons for such action I dislike to state, but they have always been the same. They did not believe the Commission would redress their grievances, or were fearful that they would incur the enmity of the railroad company. I fully concur with Commissioner Carpenter as to the manliness of the mercantile community of San Francisco, and their general readiness to maintain their rights, yet knowing, as I do, the ability of the railroad company to make or mar the fortunes of a merchant, I do not consider it an evidence of puerility to refuse to engage in an individual controversy with a rich and powerful transportation company. The fact is that the Central Pacific Railroad Company, under existing conditions, without competing eastern lines west of Utah, and almost absolutely controlling local traffic within this State, is too powerful an organization to be successfully resisted by any individual or firm. It is the part of wisdom, and evinces no want of courage, to "rather bear the ills they have, than to fly to others that they know not of," yet of which they have the most lively apprehension. Combined action, which will some day be taken, will produce the results desired.

ADDITIONAL PROCEEDINGS OF THE BOARD.

The night before our meeting in the City of Stockton, all three of the Commissioners were "interviewed" by the local reporters of that city, and each expressed his views upon the questions of "*regulation*," and "*proposed reductions*," subsequently to be made by the Board. I then announced my intention of offering certain resolutions upon my return to San Francisco. Several days thereafter a regular meeting was called by the President of the Board, and at that meeting the following resolution was introduced by myself:

OFFICE OF BOARD OF RAILROAD COMMISSIONERS, STATE OF CALIFORNIA.

WHEREAS, The present Board of Railroad Commissioners have now been in office for nearly five months, and during said time have made no regulation reducing either freights or fares, or for the prevention of extortions or discriminations upon the part of any of the transportation companies of this State; and whereas, on the fifth day of February, A. D. 1883, a substitute for Resolutions Nos. 2 and 3 was passed by a majority of this Board, the purport of which substitute was that investigation should precede action by this Board; and whereas, this Board has now investigated the subject of fares and freights upon certain lines of railroad in this State, the result of which investigation has been to demonstrate that fares and freights upon said roads are too high, and that discriminations and extortions have been and are now being practiced which are prohibited by the Constitution, and should no longer be tolerated; therefore, be it resolved:

First—That the judgment of this Board is that upon the Central and Southern Pacific Railroads and their leased lines the maximum rate for passenger fares should not in any case exceed the sum of three cents per mile, and where said rates are now equal to or less than said sum per mile they should remain as they now are.

Second—That the freight charges upon said lines of railroad above named should be reduced at least twenty per cent from the freight rates in force on said roads on the first day of January, A. D. 1883.

Third—That all discriminations which are now practiced ought at once to be forbidden.

Fourth—That this Board proceed immediately to revise the tariff of freights and fares upon the said lines of road, and serve copies of such revised schedules upon the corporations affected thereby, so that all of said contemplated reductions may go into operation on or before the first day of July, 1883.

This resolution met with an expected and an ignominious fate. It was tabled at the time it was offered, by the votes of Commissioners Carpenter and Humphreys. I, of course, voted for its adoption. Before this action of the Board, quite a lengthy argument was had upon the subject between Commissioner Carpenter and myself. A careful reading of this resolution will disclose the fact that it was drawn with a view to obviate the objections raised so often against "resolutions," as contradistinguished from "schedules." Its design was merely to get an expression of the collective opinion of the members of the Board, as to the propriety of reductions to the amount named in the resolutions. Upon this resolution and its fate, Mr. Carpenter, in his report, is prodigal in the use of his choicest rhetoric for its condemnation. The *whereases* with which it is prefaced certainly do "import" the reasons for its introduction, but the President of this Commission well knows that the language of this resolution was not used "in a tone of self-reproach," for he is well aware of the fact that I have always been willing, *anxious*, and *persistent* in my desire to redeem the promises made for substantial reductions, *given before the election*, and only made after a *full examination of the facts*. I shall not attempt to follow or answer Mr. Carpenter's denunciations of this resolution. It was introduced in entire good faith, to ascertain the views of the Board, and it accomplished its purpose, but not as I had hoped or desired. Its rejection demonstrated to me that my fellow Commissioners and myself were not in accord upon the subject of our duties, and reluctantly convinced me that my ideas would not be adopted or favorably considered by the majority of the Board, and that any reductions which would be made, would be long delayed, and by no means adequate.

The passage of this resolution, or any like it, was vigorously resisted by the railroad companies who were to be affected by its provisions, a proof to my mind that the railroad corporations entertain the opinion that reductions can be accomplished in this way, as well as by "schedules."

MR. HUMPHREYS (?) ON PASSENGER FARES.

After the defeat of this resolution, Mr. Andrus, and his assistant at the time, the son of Commissioner Carpenter, prepared for Mr. Humphreys a "schedule" of fares upon a basis of five and seven cents per mile. This schedule was offered for consideration and amendment. It was incomplete in almost every particular—left out several hundred miles of road, and was not in the form of the one subsequently adopted by the Board. During its preparation it was several times thrown in the waste basket, but was finally rescued, offered, and withdrawn, and is now on file in our office, by my direc-

tion. This schedule was the one for which I offered my original "three-cent schedule" as a substitute, which was also withdrawn at the same time Mr. Humphreys' was. Mr. Carpenter, commenting on Mr. Humphreys' first schedule, has this to say with reference to the first schedule introduced by myself:

Thereafter, on the eleventh day of June, Commissioner Foote introduced a *defective substitute* [the italics are my own], showing the distance between stations, and the price of a ticket from any given station to the next, but leaving it to any more distant point to be ascertained by computation upon the uniform basis of three cents a mile. It was not, therefore, in the established and convenient form which shows naturally the rate multiplied by the distance from one station to the next, to the end of the line, but from each to all, and from all to each over the entire road. But for the purpose of a vote upon the unreasonable uniform maximum rate, three cents per mile, over all the roads, without regard to cost or conditions of service, it was treated as a schedule.

The intimations contained in this language I feel called upon to notice. The schedule prepared by myself was "not defective" in any particular, and it contained but one mistake in figures, a mere error in calculation, which was subsequently corrected by myself, it having been discovered by the Secretary, who has carefully gone over the schedule with me, although the clerical work had been done under my direction and in my private office. Both these schedules are on file in our office. They are too long for publication here, but I cheerfully invite a comparison between them by any one who feels an interest in the subject.

The "usual and convenient form," referred to by Mr. Carpenter, when commenting upon the schedule introduced by Mr. Humphreys, is the form used in preparing documents of this kind by nearly all railroad companies for the information of their employes. Schedules so prepared are unintelligible to any outsiders without an explanation. Only a few days since, at one of the small stations on the road, I examined one of the schedules adopted by the Board, and posted by the railroad company. The gentlemanly agent was enabled, after some little time, to give me the rates from Red Bluff to Los Angeles; but, in our conversation upon the subject, he frankly admitted that, so far as the public are concerned, they were useless, as no one but an expert can tell, without an explanation from some one who already understands them, the rates from one station to another. The schedule posted by the railroad company is alphabetically arranged, stations widely apart on the map being together on the schedule, and this arrangement somewhat increases the difficulty of travelers ascertaining the distances and rates. This, at least, is the result of my observations.

On the twenty-sixth of June, Commissioner Humphreys introduced the schedule which was adopted and is now in force, which established the rates of fare at the maximum of four and six cents per mile. This schedule was prepared by the Secretary of the Board. Accompanying it was an order enforcing it, and providing that when rates were then lower they should not be raised. For this schedule and order I introduced my schedule of a three-cent rate, and an order forbidding rates to be raised where they were lower than three cents per mile, as a substitute for the schedule and order presented and fathered by Mr. Humphreys. My substitute was defeated by a majority vote. I then moved to amend Mr. Humphreys' schedule by changing the rates therein to three and four cents per mile as maximum charges to be allowed, which was defeated, I alone voting

in its favor. Mr. Humphreys' schedule and order were then adopted by a majority vote. My vote was in the negative, and was given for reasons then stated. It appeared to me that the adoption of their schedules would be a finality, so far as fares were concerned, for a long time to come, and I did not believe (nor do I now), that the reductions thereby made were or are in any sense material.

WHY REDUCTIONS MADE ARE NOT MATERIAL.

It is a fact well known to the traveling public that the rates of local fare charged by the Central Pacific Railroad Company and its leased lines, between all of the thickly settled portions of this State, have for many years been less than five cents per mile, and where the travel is greatest it has been less than three cents. Local rates have been higher. But the railroad company have for years been selling "round trip," "family," and "commutation" tickets at rates greatly lower than those prescribed by the schedule now in force. Certain local rates have been reduced, and in some cases "round trip rates" also. But the great bulk of the rates have not been touched by this schedule; for instance, the company have for years been selling "round trip tickets" from San Francisco to Los Angeles and return for the sum of \$34. The distance is four hundred and eighty-two miles, making the round trip nine hundred and sixty-four miles. At the sum of \$34 for this distance the rate per mile is a fraction over three and one half cents per mile. The schedule rates over this route are four and six cents, and a single trip ticket bought by the schedule would cost the sum of \$21 70. The old rate for single trip tickets was \$23, or \$46 for the round trip. The schedule rate for single trip tickets reduces the old rate \$1 30 each way. This, on its face, is a reduction, but when the fact is stated that a very large proportion of the travel between Los Angeles and San Francisco is done upon round trip tickets, the apparent reduction becomes no reduction at all. The majority schedule rates make few, if any, reductions upon round trip ticket rates from San Francisco to any of the stations on the line of the Southern Pacific Road to which said tickets are sold, or from those stations to San Francisco. As the greater portion of the travel is done upon these tickets, the character of the reductions made can be readily determined. Upon local rates, between stations, the reductions are in many places material, but the reductions are invariably greater in proportion as the travel decreases. As showing the character of the travel and the places at which the heaviest reductions are made, I here insert an extract from a communication from A. N. Towne to our predecessors in office, dated January 5, 1881:

Upon looking the recapitulation over more carefully, we have made a further synopsis, showing that there were *forty-six* stations from which there were no passengers carried.

Eight from which the daily average was.....	30
Nine from which the daily average was.....	10
Six from which the daily average was.....	10
Seven from which the daily average was	15
Three from which the daily average was	5
Three from which the daily average was.....	5
Three from which the daily average was.....	30
Two from which the daily average was	15
Five from which the daily average was.....	15

Three from which the daily average was	1
Three from which the daily average was	3 1/2
Two from which the daily average was	1 1/2
One from which the daily average was	1 1/2
Three from which the daily average was	1 1/2
Four from which the daily average was	1 1/2

There were also forty stations to which there were no tickets sold, and there were:

Fourteen to which the daily average was	1 1/2
Eleven to which the daily average was	1 1/2
Eight to which the daily average was	1 1/2
Four to which the daily average was	1 1/2
One to which the daily average was	1 1/2
Six to which the daily average was	1 1/2
Three to which the daily average was	1 1/2
Two to which the daily average was	1 1/2
One to which the daily average was	1 1/2
Six to which the daily average was	1 1/2
One to which the daily average was	1 1/2
Three to which the daily average was	1 1/2
Two to which the daily average was	1 1/2
Three to which the daily average was	1 1/2
Four to which the daily average was	1 1/2

This list might be continued, showing many more stations that did not average one passenger a day either to or from.

Trusting the information we give you here may be of interest and entirely satisfactory, I am yours truly,

A. N. TOWNE,
General Superintendent.

These figures show that there are a large number of stations from which the travel was exceedingly light. The six thousand five hundred changes and reductions claimed to have been made by the majority schedule, include all changes to and from the points mentioned by Mr. Towne, and from which there was really little or no travel. Such reductions as these are merely on paper, and practically amount to nothing.

The following extract and exhibit was prepared by a friend of mine from a comparison of the majority schedule rates, and the reports furnished our office by the railroad authorities, and is self-explanatory. The figures are a fair average sample of the reductions made by the whole schedule:

RECAPITULATION,

Showing the receipts at each station on the three routes from San Francisco to Sacramento to every other station on these routes (exclusive of the Oakland ferry) for the month of May, 1883, calculated from the return for that month made by the Central Pacific Railroad to the Board of Railroad Commissioners; also showing the reductions which would have been made in those receipts had the schedule of the Railroad Commissioners been in operation in that month and no increase of travel been consequent thereon:

Station—From—	Estimated Receipts.	Estimated Reduction.
San Francisco (via Benicia).....	\$15,181 575	\$253 60
San Francisco (via Martinez).....	6,751 025	None
San Francisco (via Niles).....	5,221 60	11 40
Oakland Pier.....	2,665 40	56 90
Oakland, Market Street.....	324 30	None
Oakland, Broadway.....	256 60	3 75
Oakland, East.....	325 725	None
Alameda.....	23 85	None
Oakland, Sixteenth Street.....	1,575 50	32 30
Stock Yards.....	3 30	None
Stege.....	198 525	65
San Pablo.....	404 45	None
Martinez.....	1,420 10	10 15
Bay Point.....	36 45	1 90
Cornwall.....	411 40	6 90
Antioch.....	506 05	14 15
Brentwood.....	149 50	6 20
Byron.....	378 15	18 05
Bethany.....	69 00	1 65
Melrose.....	84 45	45
Elmira.....	664 10	60 20
Batavia.....	91 25	15 80
Dixon.....	1,006 75	57 70
Davis.....	1,243 25	182 35
Stockton.....	3,948 15	168 30
San Leandro.....	770 20	12 15
Haywards.....	1,562 70	9 15
Decoto.....	455 80	5 40
Niles.....	443 05	8 20
Sunol.....	268 30	50
Pleasanton.....	833 90	6 95
Livermore.....	1,350 05	46 10
Tracy.....	178 60	20 05
Banta.....	193 30	9 00
Pinole.....	224 85	5 20
Vallejo Junction.....	255 55	5 95
Port Costa.....	822 20	10 10
Benicia.....	1,918 35	88 60
Army Point.....	466 65	None
Suisun.....	1,255 10	249 95
Vallejo.....	2,388 90	64 55
Totals.....	\$56,230 90	\$1,444 25

The gross receipts of the Oakland Ferry for the year 1882, according to Mr. Goodman's letter to the Railroad Commissioners, dated April 10, 1883, were \$575,233 05. Take one twelfth as a probable estimate of like receipts for May, 1883 (they were probably much greater), gives \$48,019 75; which, added to \$56,230 90, gives \$104,250 65 for the total receipts for May, 1883. To get percentage of reduction divide \$1,444 25 by \$104,250 65—gives 1.383 per cent.

Mr. Goodman, the General Passenger Agent of the Central Pacific system of railroads, has also given us some figures which throw light upon this subject. In answer to questions concerning business of his roads and the rates of fare charged, he furnishes this information:

Local travel in the State, including ferries:	
Total number of passengers.....	7,366,525
Total miles.....	124,809,648
Total earnings.....	\$3,189,399 74
Average miles traveled per passenger.....	16.94
Average charge per mile per passenger, in cents.....	2.56
Same, excluding fares of the Oakland ferries:	
Total number of passengers.....	1,471,366
Total miles.....	70,206,844
Total earnings.....	\$2,613,165 79
Miles traveled by passengers.....	47.72
Charges per mile per passenger.....	3.72

Five sixths of the passengers transported over the whole Central Pacific system during the year 1882, were carried by the Oakland Ferry lines. Many of these passengers traveled upon commutation tickets, which are sold for three dollars per month, and calling the distance from San Francisco to Oakland eight miles, averages *five eighths of one cent per mile*. The single trip tickets are sold for fifteen cents each way, averaging less than two cents per mile. These low figures were taken by Mr. Goodman to make his average rate of two and fifty-six one hundredths cents per mile, and they applied to five sixths of the whole travel. It was before the adoption of the present schedule that Mr. Goodman made his estimates, and he then said that the average rate for local travel, excluding the Oakland ferries, was three and seventy-two one hundredths cents per mile. This estimate was obtained by taking all the local rates then in force, and in many places it was and is less than three cents; as, for instance, between Sacramento and San Francisco, and San Francisco and San José. The reduction claimed for this schedule is stated to be "more than thirty per centum of the rates superseded over and upon one thousand six hundred and four miles of road." This statement should be read in connection with the fact, that the rates are always reduced from and to points where travel is light, and that it is only claimed to be a reduction upon single trip fares and not upon "round trip" or "commutation rates," which are now, and have been for years, lower than the *maximum* prescribed by the schedule of the Board. The average rate of three cents and seventy-two one hundredths per mile, is *twice as great* as that *exact*ed over all the eastern roads doing any considerable volume of business, and in my judgment should be materially reduced.

Holding these views, and believing that the rates established by this Board's schedule were not "material," and not what they ought to have been, and the other Commissioners having expressed themselves as wishing to make further reductions whenever the necessity for them became known, I busied myself in the preparation of another "fare schedule."

It is thus referred to in the majority report:

On the nineteenth day of October, A. D. 1883, Commissioner Foote offered his first schedule of passenger fares, the same in form as that of Commissioner Humphreys, adopted on the twenty-sixth day of June, and applying to the same roads. It fixed a uniform maximum of three cents per mile for all of them and adopted the existing rates below it.

Mr. Carpenter certainly knew that this was not my "first schedule;" he certainly remembered that his vote and that of Mr. Humphreys had defeated one offered by me several months before. When he alludes to my schedule as "the same in form as that of Commissioner Humphreys," he certainly does not mean to give that gentleman the credit for either the arrangement or preparation of the one introduced by him. The work upon that was done by the Secretary, and the plan was that upon which the Central Pacific and other lines have always prepared such documents. The last schedule introduced by myself was argued at considerable length. I pointed out what I considered the failures of the one in force, and urged upon my associates the necessity for its adoption. It was prepared at my own office, and was upon the plan of the one introduced by Mr. Humphreys; not that I considered it necessary, but to meet objec-

tions urged against "resolutions" and the first schedule presented by myself. It was introduced together with an order for its enforcement. It was laid over for consideration, and finally, upon the sixteenth day of November, I called the vote upon its adoption. *I voted for it. It was rejected by the Board,* and since that time the question of fares has not occupied our attention.

FREIGHT REDUCTIONS PROPOSED AND ACCOMPLISHED.

The freight reductions of twenty per cent proposed by myself were defeated, as I have already shown. On the twenty-fifth day of June, A. D. 1883, Mr. Carpenter introduced an order to the following effect, for which I voted:

It is ordered that the Central Pacific and the Southern Pacific Railroad Companies, for themselves and leased lines, and also all other railroad companies having offices in the City of San Francisco, be and they are hereby required to appear before this Board, at its office in said city, on Wednesday, the twenty-seventh day of June, 1883, at ten o'clock of said day, then and there to show cause, if any they have, why reductions on rates of freights to tide-water, and thence to all interior points in this State, should not be made, as follows:

First—An average reduction of from ten to twenty per cent for moving grain to tide-water from the following interior points, namely: Willows to Roseville Junction, Yolo to Sacramento, Knights to Sumner, Curtis to Huron, Soledad to Arena, Eden Vale, and others.

Second—Such a reduction, not less than thirty-three and one third per cent on present rates, for carload lots of grain for seeding and feeding purposes, from points on tide-water to all interior points in the State, as shall make the rates on grain the same from and to the interior.

Third—The average reduction of present rates equal to twenty per cent on flour and mill-stuffs, from mills at tide-water, and other manufacturing points, to all interior points in the State.

Fourth—An average reduction of present rates equal to thirty-five per cent on all kinds of household goods and furniture, and on emigrants' movables in carload lots in all directions to all points in the State.

Fifth—An average reduction of twenty per cent on present rates for fence wire in carload lots to all points in the State.

Sixth—An average reduction of thirty-five per cent on rates for blacksmiths' coal, dairy and table salt, and other articles of the same class, in carload lots, to all points in the State.

Seventh—An average reduction of twenty per cent on the carriage of grain sacks, agricultural implements, wagons, and vehicles of all kinds to all points in the State.

Eighth—Why reductions on present rates for the transportation of wool, also live stock, especially in less than carload lots, should not be made. It is further ordered that the time for showing such cause as aforesaid shall be limited to said day.

I particularly direct your attention to it and the proceedings, thereafter following. It proposed a reduction upon grain rates from certain interior points to tide-water, which have never been made. The reduction proposed did not meet my views, but I voted for it because I was not able to get greater reductions made. In due time the companies to whom this order was directed, showed cause by written communications contained in the appendix to the majority report. They were published and widely circulated afterwards, in the form of pamphlets. They repay perusal, as they contain the reasons urged against a reduction, and in them the assertion is made that, all things considered, "fares and freights" are as low as they ought to be on these roads. From my examination of the subject, this conclusion is one which none but those financially interested in railroads have honestly reached. Mr. Carpenter, when upon the subject of freights, discourses at some length upon the subject of comparisons made, "equations of rates," etc. Shortly after the adoption of this order, Commissioners Carpenter and Humphreys employed General J. C. Sullivan, of Oakland, whom you will perhaps remember as the gentleman who did some work for the Board of which you were a mem-

ber. General Sullivan was not employed by the Commission, but by the Commissioners as individuals, and as I did not pay him any portion of the salary he received, I did not derive any benefit from his work. The comparisons he made were never presented to the Board, or shown to me personally, but that they were exceedingly valuable the freight schedule now adopted by the Board sufficiently attests. I voted for that "proposed reduction" under the impression that the changes that it made, so far as I had been able to ascertain, were in some respects material. If the vote were to be taken over again I should vote against it, because subsequent investigation has led me to the conclusion that it is not *really a bona fide* or "*material reduction*" of "freight rates" in any fair meaning of the phrase.

REDUCTION OF FREIGHT RATES PROPOSED BY G. J. CARPENTER.

<i>First</i> —On grain, including all the cereals, in mixed carload lots to all interior points:	
From San Francisco.....	35 per cent
From Port Costa.....	35 per cent
From Stockton.....	35 per cent
From Sacramento.....	35 per cent
<i>Second</i> —Flour and millstuffs of all kinds, in sacks and barrels, and mixed carload lots:	
From San Francisco.....	25 per cent
From Port Costa.....	25 per cent
From Stockton.....	25 per cent
From Sacramento.....	25 per cent
<i>Third</i> —Household goods, furniture, and farm utensils, and live stock, comprising the effects of a family, mixed carload lots, in all directions to all points in this State: thirty-five per cent.	
<i>Fourth</i> —Fence wire, nails, spikes, bar iron, flat and round sheet-iron, iron pipe, and horse-shoes and nails, in mixed carload lots, in all directions to all points in this State: twenty per cent.	
<i>Fifth</i> —Blacksmiths' coal and table and dairy salt, in carload lots, in all directions and to all points in the State: thirty-five per cent.	
<i>Sixth</i> —Grain sacks, bags and bagging, agricultural implements and vehicles, in mixed carload lots, to and from all points in the State: twenty per cent.	

By an order or resolution, adopted by the Board some time before, this proposed reduction was sent to the railroad officers, and they were to accept it within three days, and if accepted the railroad company was to use their own clerical force to prepare the schedules in accordance with it, and send it to the Board for approval. This reduction was accepted by the railroad company, and the work subsequently submitted to our Secretary for approval. As the majority report shows, Mr. Andrus approved the work, and Commissioners Humphreys and Carpenter adopted an order putting the schedules in force. The schedule prepared by the railroad company, to comply with the terms of Mr. Carpenter's "proposed reductions," consists of two hundred and thirteen pages, every page containing twenty columns of figures. This freight schedule is imposing in appearance, but for practical purposes amounts to but little. The "order to show cause," introduced by Mr. Carpenter, on the twenty-fifth day of June, 1883, proposed reductions upon grain from interior points to tide-water. His proposed reductions, upon the basis of which the schedules were prepared, *omits* this important factor. Mr. Carpenter's proposed rates are all upon *carload lots*, "straight" or "mixed." Goods shipped in less quantities than carload lots are not affected by the "proposed reductions," or the schedule, and herein is to be found the utter inefficiency of both.

The reduction of grain rates from the interior to tide-water are of more importance to the producing classes than any other subject which will ever come before this Board, in view of the fact that Cal-

ifornia now occupies almost the front rank as a grain producing State. For *one* ton of grain shipped from San Francisco to interior points there are more than a *thousand* tons transported in the other direction. Upon the *one ton*, which is charged for at exorbitant rates, there is a reduction, upon the *one thousand*, which is the product of the *labor and time* of the producer, *there is no reduction whatever*. Such a reduction is "like asking for bread and receiving a stone." A small farmer in the interior of the State, owning or renting one hundred and sixty acres of land, in a favorable season, will raise a crop of grain or other produce, which will fill ten cars of ten tons each. When he undertakes to ship to the market he is compelled to pay, *notwithstanding the material reductions* made by this Board, the same exorbitant freight rates which have been heretofore exacted from him. Now, the farmer who ships *ten tons* to tide-water will not likely ship *half a ton* from the other direction, and upon this half ton he gets no reduction, for the reason that the schedule makes no change in the rates except the goods be shipped in "carload lots." "*Blacksmiths' coal, table salt, household goods, the effects of a family,*" and some other articles, are reduced thirty-five per cent when shipped in "carload lots, straight or mixed." The beauty of this reduction is apparent, and forcibly illustrated, when it is known, as must be apparent, that such coal is needed only in small quantities, and a carload of "table salt" would last the people of the San Joaquin Valley from the present time, until the "saving grace" of this Commission preserves them from the wrath and extortion of the railroad authorities. Besides, it makes little difference to the producer what the rates are upon the goods which he himself ships from other points, if the rates charged upon the products of the soil are reasonable and fair. I might illustrate the defect of this freight schedule to an indefinite extent. The one given is selected at random from among many that occur to me.

The average local freight rates are more than twice as high upon the Central Pacific and other lines in this State, upon almost every article produced in large quantities, than those that are transported over eastern roads. The "volume of traffic," an argument often used by railroad authorities here, is in our favor, so far as local transportation is concerned. That reductions are imperatively demanded, and ought to be made upon such articles from "interior points" to "tide-water," or "shipping points," is a proposition too plain to admit of discussion.

COMPARATIVE ESTIMATES BETWEEN EASTERN AND CALIFORNIA ROADS.

As showing the comparative charges between the eastern and California lines, as well as the *ratio* of increase between *gross earnings* and *operating expenses*, I herewith present for your consideration certain figures, obtained from reliable (?) sources. The following table, taken from Poor's Manual for the year 1883, shows the gross and net earnings per mile of the Central Pacific Railroad, and the per cent of operating expenses to gross receipts from the years 1864-5 up to and including the year 1882:

Year.	Gross Earnings.	Net Earnings.	Per Cent of Operating Expenses.
1864-5-----	\$14,029 62	\$5,159 09	36.77
1866-----	11,523 58	2,676 31	23.22
1867-----	12,359 01	2,876 07	23.27
1868-----	7,630 43	2,782 73	36.46
1869-----	9,373 26	4,947 97	52.78
1870-----	9,060 87	4,462 87	49.31
1871-----	8,888 72	3,852 36	43.34
1872-----	10,349 18	4,335 01	41.88
1873-----	10,526 97	4,066 51	38.63
1874-----	11,193 28	4,332 35	38.71
1875-----	12,068 63	6,115 37	44.41
1876-----	11,925 76	6,411 93	46.23
1877-----	9,237 88	4,360 30	52.80
1878-----	9,031 87	4,505 27	50.47
1879-----	7,677 84	2,836 56	65.33
1880-----	8,312 98	3,442 28	62.77
1881-----	9,448 67	3,731 24	60.51
1882-----	8,436 95	2,814 53	66.64

This increase in the operating expenses to gross earnings is a system very much in vogue in the Eastern States as well as here.*

From Poor's Manual of 1883, I take at random the freight and fare charges on certain well-known Eastern lines, showing how much greater are those charges here than there.

On the New York Central, for the year 1882, the report is as follows:

Operations for the year ending September 30, 1882 (average 956.65 miles): Trains run (passengers, 5,448,929; freight, 10,912,064), 16,360,993. Total engine service, 23,907,884. Passengers carried (through, 207,496; way, 10,101,483), 10,308,979; carried one mile, 432,243,282; average distance, 42 miles; average number per train, 79; average fare, 1.80 cents. Freight moved (through, 2,106,707; way, 9,223,686), 11,330,393 tons; moved one mile, 2,394,799,310 tons; average haul, 211.36 miles, against 228.34 miles in 1880-81; average train load, 228 tons, against 217 tons in 1880-81; average rate per mile, 0.73 cents.

From the same source I learn that on the New York, Lake Erie, and Western road, the "total length of all lines operated in the year ending September 30, 1882, was 1,029.03 miles."

The operations were as follows:

Trains run (passenger, 3,546,055; freight, 8,569,938), 12,115,993 miles.

* In the month of February, 1883, Mr. Towne sent to the office of the Commission answers to certain questions which had been sent to him at a previous date. From the original document on file in our office, I quote this question and answer:

Fourth—State the per cent of operating expenses as compared to gross earnings for each year since the road has been in operation.

Answer—The per cent of operating expenses to gross earnings each year, from 1864 to 1882, are as follows, to wit:

1864-5-----	36.77	1874-----	38.71
1866-----	23.22	1875-----	41.41
1867-----	23.27	1876-----	46.23
1868-----	36.46	1877-----	47.20
1869-----	52.78	1878-----	50.08
1870-----	49.31	1879-----	59.51
1871-----	43.34	1880-----	58.73
1872-----	41.88	1881-----	57.52
1873-----	38.63	1882-----	62.60

These percentages of Mr. Towne agree precisely with those in Poor's Manual down to the year 1875. After that date they differ widely. Which is wrong and which is right I do not undertake to say, but taking either set of figures they are not correct save in one or two instances. In other words, calculations based upon the operating expenses as compared to gross earnings, do not produce the results furnished by either Mr. Towne or those obtained from Poor's Manual. These figures are furnished to us as authentic, and upon which our official action is supposed to be based. They are deceptive, which illustrates the difficulties to be met, and the caution to be observed in acting upon statements which are of course tabulated with a design to present the corporation side of the question in the most favorable light possible.

Total engine service, 15,292,397 miles. Passengers carried, 6,784,195; carried one mile, 225,130,883; average rate per passenger per mile, 1.947 cents. Freight moved (general, 5,790,566; coal, 6,104,672), 11,895,238 tons; moved one mile (general, 1,343,313,585; coal, 611,076,125), 1,954,389,710 tons; average rates per mile, general freight, .722; coal, .808; all freight, .749 cent. Company's freight moved, 868,710 tons, making total tonnage, 12,763,948 tons.

On the New Jersey Central the following is the report for the year ending December 31, 1882:

Trains run (passenger, 2,510,263; freight, 4,243,047), 6,753,310 miles. Total engine service, 8,230,627 miles. Passengers carried, 9,239,211; carried one mile, 118,471,268; average fare, 1.861 cents. Tons freight moved, 7,726,235; moved one mile, 680,707,020; average rate, 1.269 cents.

On the Delaware, Lackawanna, and Western Railroad, the following is the report:

Total length of track on all lines owned, leased, controlled, and operated, 1,854.03 miles.

The following shows the operations of the line for the year ending December 31, 1882:

Trains run (passenger, 2,208,258; freight, 8,308,474), 10,516,732 miles; passengers carried, 6,070,329; carried one mile, 91,025,844; average rate per mile, 2.22 cents; freight moved, 7,452,757; moved one mile, 711,640,163; average per mile, 1.35 cents.

The Pennsylvania Railroad, one of the oldest and largest railway corporations in the country, including its second, third, and fourth tracks and sidings, operates five thousand nine hundred and six miles of road.

The operations of one of its divisions (they are given separately in the manual) for the year ending December 31, 1882, were as follows:

Passenger and freight mileage of engines (passenger, 5,097,229; freight, 15,236,589), 20,333,818 miles. Total engine mileage, 21,008,408. Passengers carried (first-class, 7,460,692; emigrant, 69,762; commutation, 2,842,440), 10,372,894; carried one mile, 245,971,772; average rate per mile, 2.374 cents; average distance, 23.71 miles. Freight moved (through, 1,944,819; way, 18,415,580), 20,360,399; moved one mile, 2,879,542,701 tons; average rate per mile, 0.817 cent.; average distance per ton, 141.43 miles.

The Chicago and Alton Railroad, operating eight hundred and forty-nine miles of road, reports as follows:

Operations for year ending December 31, 1882: Trains run (passenger, 1,550,018; freight, 2,513,523), 4,063,541 miles. Passengers carried (through, 123,600; local, 1,543,391), 1,666,991; carried one mile, 101,150,959; average mile rate, 1.95 cents. Freight moved (through, 772,975; local, 2,749,865), 3,522,840; moved one mile, 474,823,908 tons; average mile rate, 1.26 cents.

The Chicago and Northwestern operates three thousand two hundred and seventy-eight miles of road, and reports as follows for the year ending May 31, 1882:

Trains run (passenger, 3,999,677; freight, 9,003,377), 13,003,054 miles. Engines run, 18,157,257 miles; cost per mile run, 20.51 cents. Cars run (passenger, 19,801,642; freight, 194,547,302), 214,348,944 miles. Passengers carried, 6,754,717; carried one mile, 205,574,178; mile rate, 2.52 cents. Freight moved, 8,190,893; carried one mile, 1,192,188,039 tons; mile rate, 1.47 cents.

CENTRAL PACIFIC RATES.

The average rates for the carriage of passengers charged by the Central Pacific Railroad, as given by Poor's Manual for the year ending December 31, 1882, was 2.92 cents per mile, and for freight per mile, 1.81 cents. As I have shown from Mr. Goodman's letter, heretofore given, the average local rate for passengers is 3.72 cents per mile, excluding the Oakland ferry traffic. The Central Pacific is perhaps the only large corporation in the world which transports nearly five sixths of its whole number of passengers over a cheap ferry route.

The quotations made as regards other roads show that the Central Pacific charges nearly twice as much upon both passengers and freights as is exacted by eastern roads for the same services. *As a consequence, it has been enabled to earn more clear money per mile, upon a limited amount of traffic, than any one of six great eastern lines operating through a densely populated country.*

FURTHER ATTEMPTS TO SECURE REDUCTIONS.

The Central Pacific Railroad and its leased lines are the only roads in this State which have freight rates *not uniform in either direction*. All other roads have a *freight tariff uniform in amount over the same road* in either direction. The Central and Southern Pacific system exacts heavier rates on grain going from "tide-water" than on the same article coming from the "interior" to "tide-water." The discrepancy is based upon the argument, and said to be controlled by the fact, that the volume of traffic is greater on these articles from the interior than to it. The argument is fallacious and scarcely worth considering. From the facts herein stated, I unhesitatingly assert that the "freight reductions" made by this Board are mere deceptions and less "material" even than those relating to "passenger fares." Discriminations have been prevented in some instances, but allowed to remain unchanged in others. My own idea is that a reduction of twenty per cent upon local freight rates, upon all articles in either direction, in carload lots, or in smaller quantities, should be made now, and that discriminations found to exist in such a schedule could be eliminated therefrom as discovered; and to that end I introduced the following resolution shortly after Mr. Carpenter's "Proposed Reductions" were presented to the Board and adopted:

OFFICE OF THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF CALIFORNIA.

It is hereby ordered that on all railroads and lines of transportation in this State, owned, leased, or operated by the Central Pacific Railroad Company, freight rates shall be and are hereby reduced and established as follows:

First—On grain, including all the cereals, from all interior points in this State to all other interior points, and to all tide-water points, in carload lots, straight or mixed, there shall be a reduction of twenty (20) per cent from the rates now charged per tariff books of June 1, 1881. Upon grain, in less than carload lots, the rates shall be reduced thirty (30) per cent in all cases from those now in force.

Second—Green fruit, in less than carload lots, where now rated as *first class*, shall be rated as *third class*, per tariff books on file in this office.

Third—Upon wool, from all points in this State, a reduction of twenty (20) per cent, whether shipped in carload lots, or in smaller quantities.

Fourth—Upon live stock of all kinds, in carload lots, to and from all points in this State, now shipped under special contract rates, there shall be made a reduction of twenty (20) per cent upon said rates as they are now charged.

Fifth—Upon beans, potatoes, flax seed, alfalfa seed, hops, onions, and mustard seed, between all points in this State, in either direction, and in any quantity, and irrespective of the classification which now obtains, there shall be a reduction of twenty (20) per cent from existing rates.

Sixth—Upon wood, coal, lumber, shingles, laths, brick, cement, lime, and ores of all kinds, to and from all points in this State, and irrespective of present classification, in carload lots, or in smaller quantities, there shall be a reduction of twenty (20) per cent from existing rates.

Seventh—It is further ordered that a certified copy of this order shall be immediately served upon said company, and if, within three days after such service, said company shall file a written waiver with the Secretary of said Board of Railroad Commissioners of the State of California, of a separate schedule, and printed copy thereof, and shall specify therein the time, not exceeding twenty days from the date of said service (unless upon good cause shown, said Board of Railroad Commissioners shall grant further time), within which changes of rates and reductions will be made and put in force, then, and in that case, said company may make such changes and reductions in its existing schedules, and post the same according to law, and in accordance with this order; provided that the company accepts this order, its schedules during preparation shall be open to inspection by the Secretary or any member of said Board.

It is further ordered, in the event that said company shall fail to accept this order within the time named, that the Secretary is hereby directed to prepare freight schedules as soon as possible in accordance with this order.

The principle of reduction provided for in this resolution was *uniform*. Its consideration has been postponed. In the majority report, Mr. Carpenter, in an allusion to other reductions proposed by myself, of the same general character, has this to say:

It follows that extortions and discriminations are not to be remedied by sweeping and perfunctory declarations that they exist and ought to be forbidden, but by reforming the rates in which they are found. To avoid the plodding processes of examination, it is possible to assume, without proof or knowledge, as is often done, that all are excessive, and therefore extortionate. But that all are unequal, and therefore discriminative, is a solecism too palpable to excuse on the score of any negligence or ignorance, and absurd as it is, it is no more so than the correlative proposition that unequal rates can be equalized and discriminations eliminated therefrom by uniform reductions.

From a fair consideration of this language, it will readily be perceived that the foregoing resolution will not be adopted by the present Board, and that no schedules will ever emanate from this office, based upon the principles which it contains.

The "perfunctory declarations" in this resolution (according to the majority report) are mere reiterations of facts known to exist by every intelligent man in the State.

The majority report contains this clause, referring, I presume, to the Commission or some member thereof: "That all are unequal, and therefore discriminative, is a solecism too palpable to be excused on the score of any negligence or ignorance." If this "negligence" or "ignorance" is intended as descriptive of the character or official conduct of the majority of this Board, I have nothing to say concerning it. Their report speaks for itself. If it is intended for me, it is not true, for I have performed my duties with as much zeal as any other member of the Board, and I think I have as clear a perception of the duties devolving upon me as either of my associates. In other words, my whole time for the past year has been devoted to the duties of my office. I have no desire, and this is not the method or the place, to indulge in personal controversies, but when such language is used in the majority report with reference to propositions made by me, I should be wanting in my duty to myself, as well as to the whole people, if I did not notice it in becoming and temperate language.

OTHER FACTS DEEMED IMPORTANT.

In addition to the "proceedings of this Board," an annual report of which to your Excellency is required, the Commissioners are required to report "such other facts as may be deemed important." Under this head the majority report contains a number of facts of interest, carefully culled from the reports made to the Board, and also some suggestions for the extension of the powers we now have. I concur in the recommendations made, and in the biennial report to be made next year to yourself and submitted to the Legislature, shall endeavor to make some further suggestions for legislative action, which I deem important. It is useless to make them now. The majority report gives the conditions of the roads in this State as regards efficiency and equipment, facts which can only be known from an examination of the reports submitted to the Board, as the Commission has made, thus far, but one official journey, and that only through the southern part of the State. My own observation from numerous trips made (I have only traveled on the Central Pacific and its leased lines), is that the road is generally in good condition, but the occurrence of fatal accidents is amazingly frequent. The service is not so efficient as upon many of the first class eastern lines, and the rate of speed much less than upon all first class roads.

The "sleeping car service," formerly under the control of the "Central Pacific Company," has been sold or leased to the "Pullman Company," and, as I am informed, the wages of the employés very greatly reduced—porters from \$40 to \$15 per month. This Commission has not been officially informed of these changes. The "Pullman Company" is, however, a "foreign corporation," and may not, however, be under the jurisdiction of the Board for that reason. That sleeping car accommodations might be construed, in these days of latitudinous construction of constitutional amendments, to be "a regulation of commerce," exclusively under the control of Congress, may or may not be the reason for the transfer of the sleeping car department of the Central Pacific system, to the control of another company.

I had intended at the outset to discuss the theory of "competitive" and "non-competitive points," as used in the arguments of the railroad companies, and given therein as a conclusive reason for making low or high rates. In this State the Central Pacific system has practically no "competition," as is known in the Eastern States, and the reasons which would be given there for lowering or raising rates, would be worthless as arguments here; and indeed the whole argument based upon the theory of "cutting rates" to "meet competition," is urged with a persistence which suggests that it is more plausible than real. *Railroads do not compete for traffic which does not pay a profit.* If "competition" lowers rates so that carriers by rail cannot transport goods at a reasonable profit, they cease to compete for business in localities where such competition exists. They do not carry freight at an actual loss. The well worn argument that "high *maximums* must be allowed in order that low *minimums* may be possible," has about subserved its purpose.

SECOND CLASS RATES.

The fare schedule adopted does not touch second class rates in any direction. Although this Commission is empowered, under the Constitution and laws, to fix "rates," and "rates of charge," there is some doubt of its power to order the railroad companies to sell second class tickets to and from all stations on their lines of road. I shall shortly propose measures in the Board to test this question, and if it is determined that the power does not exist, shall, in my next report, suggest some legislation which will enable us to control the subject. If the power is intrusted to us it should be exercised, for the evils to be remedied are many and notorious. I have conversed upon this subject with the official controlling this matter for the Central Pacific system, and in reply to my question as to why second class tickets are not sold to and from all points on the lines of road under his control, he said that if this were done "everybody would travel second class." This answer is the key-note to the whole subject. From San Francisco to Sacramento, Los Angeles, and other *competing points*, and from all these points to San Francisco, *second class through tickets without stop-over privileges*, are sold at a very liberal discount upon *first class rates*. From intermediate points between those named, where there is no other public mode of conveyance, except the railroad, no *second class tickets* can be purchased in either direction. Second class cars are run by these stations on every through and upon some of the local trains. A traveler can purchase a first class ticket at these stations and ride in a second class car, but no second class tickets are for sale by the railroad agents. This is a policy which has created much harsh feeling in the San Joaquin Valley and elsewhere against railroad management. It ought to be changed, either by order of this Commission, or voluntarily by the railroad authorities.

In the brief time allotted me in the preparation of this report (from the seventh day of January, 1884, to the date hereof), and with no knowledge of the contents of the majority report except such as was afforded me by the perusal of the hasty transcription made by our Stenographer, it has been impossible to present to you many phases of the "transportation question," which are well worthy of notice and discussion.

I will not close this, however, without some reference to the

POLITICAL METHODS OF CORPORATIONS IN CALIFORNIA.

This is a subject with which your long service upon this Board, and your candidacy for and election to a higher position, has doubtless rendered you somewhat familiar. It is currently reported and generally believed, that certain of the railroad companies of this State have regular political agents employed, at high salaries, to obtain favorable legislation and accomplish other purposes of benefit to the corporations which retain them. It is of course perfectly natural that corporate bodies should desire to protect their interests; but this should be done in an honorable and in a legitimate way. Furnishing "solid reasons" for political action or official action of any kind, is a species of argument not longer to be tolerated, if good government and free institutions are to be maintained and perpetuated. In what

has hereinbefore been said, I make no personal allusions other than where they are plainly intended and the individuals actually named. I arrogate to myself no more of skill, and claim no greater degree of honesty than I accord to others, for I have not discussed the question of motives, but have simply endeavored to state the facts.

The money allowed the Board for contingent and traveling expenses, by the last Appropriation Bill, has been judiciously and economically expended. The whole sum was \$2,500; \$1,500 of this amount was specifically appropriated for traveling expenses of the Commission for the two years ending in 1884. Less than one tenth of this sum has thus far been expended.

All of which is respectfully submitted.

W. W. FOOTE,
Railroad Commissioner, Third District, State of California.





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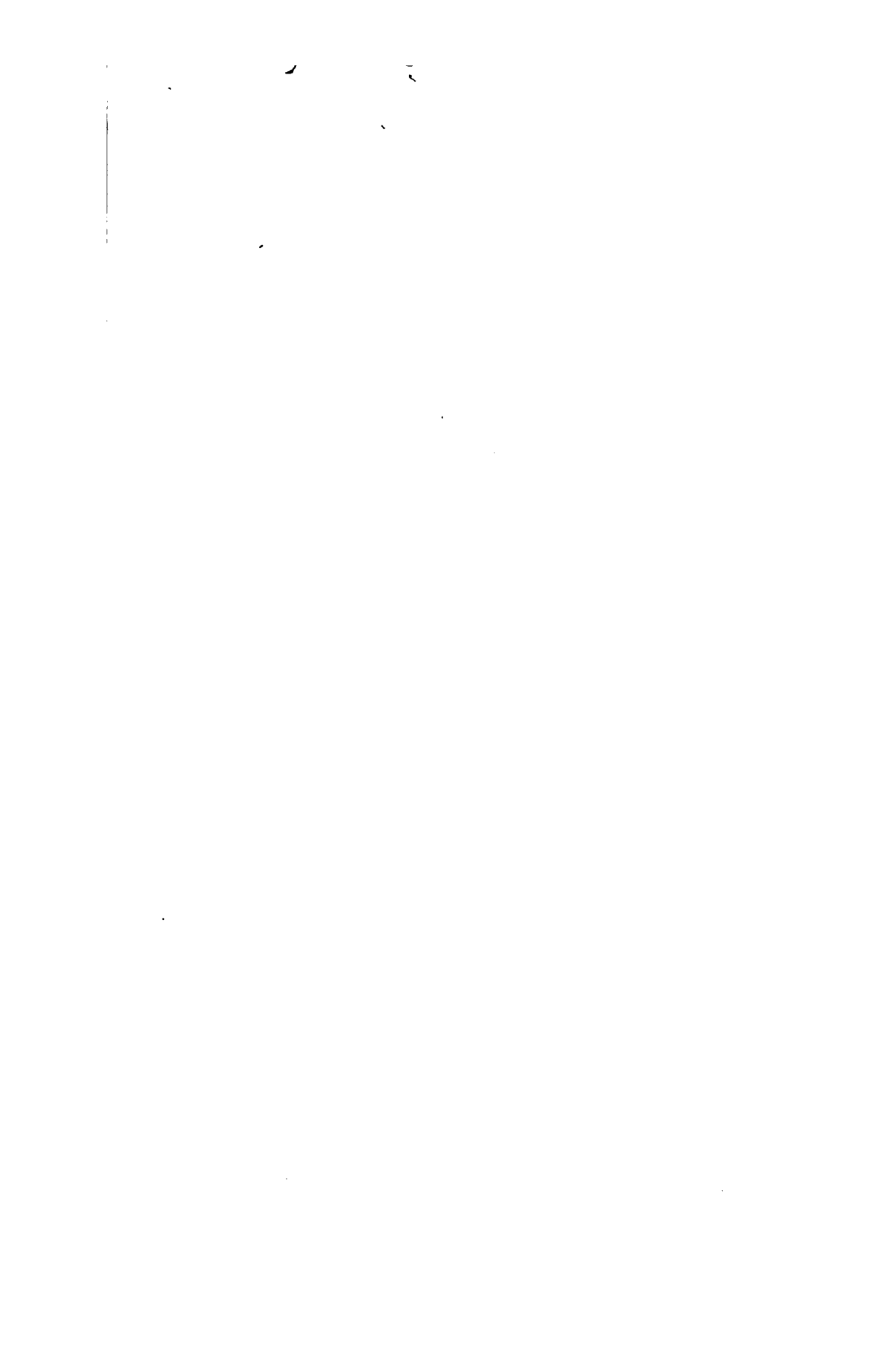
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